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THESIS

AN EXAMINATION OF
ACQUISITION ETHICAL DILEMMAS:
CASE STUDIES FOR ETHICS TRAINING

by

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From narratives collected in interviews, this study identifies common ethical dilemmas faced by Department of Defense acquisition employees and analyzes the decision processes used to resolve the dilemmas. The narratives have been complied into acquisition ethical case studies, which can be used to supplement and tailor current Department of Defense ethics training.

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AN EXAMINATION OF ACQUISITION ETHICAL DILEMMAS: CASE STUDIES FOR ETHICS TRAINING

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ABSTRACT

As a skill, ethical decision making requires cultivation through training and practice. However, for Department of Defense acquisition employees, ethical training has been more of an orientation to legal requirements and restrictions, than as a guidance for learning how to make ethical decisions. Although legal parameters of acceptable behavior and theoretical discussion of ethics are necessary to provide a foundation for a well-developed system of ethics, they do not provide practical approaches to ethical dilemmas.

From narratives collected in interviews, this study identifies common ethical dilemmas faced by Department of Defense acquisition employees and analyzes the decision processes used to resolve the dilemmas. The narratives have been complied into acquisition ethical case studies, which can be used to supplement and tailor current Department of Defense ethics training.

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I. INTRODUCTION

A. GENERAL

Ethical decision making is a learned skill, not an innate talent. It requires first, the ability to distinguish right from wrong, and then the commitment to do what is right (Josephson, 1993). As a skill, ethical decision making requires cultivation through training and practice. However, for Department of Defense (DOD) acquisition employees, ethical training has been more of an orientation to legal requirements and restrictions, than a guidance for learning how to make ethical decisions. Although legal parameters of acceptable behavior and theoretical discussion of ethics are necessary to provide a foundation for a well-developed system of ethics, they do not provide practical approaches to ethical dilemmas. This study and analysis of actual ethical decision making will identify successful techniques which can be taught and practiced.

B. BACKGROUND

Many attempts have been made to ensure that the ethical environment of Government, particularly in the acquisition workplace, is one of high standards. A primary means of such attempts has been legislative, which generally focuses on lists of forbidden behavior and the legal consequences for violations of the legislative directives. The DOD Joint Ethics Regulation (JER) represents current efforts to facilitate ethical decision making by all DOD employees. Its stated purpose is to provide a "...single source of standards of ethical conduct and ethics guidance..."(JER,p. 1) Additionally, the JER includes the Procurement Integrity Act provisions from Section 27 of the Office of Federal Procurement Policy Act which apply specifically to acquisition employees.

The Procurement Integrity Act of 1988, which represents the cornerstone of acquisition legislation, follows the trend of "thou shalt nots." Prohibited conduct under the Procurement Integrity Act includes: offer or acceptance of bribes, employment with commercial beneficiaries of Government contracts, participation in acquisition decisions for companies in which one has a financial interest, and the actual or appearance of conflicts of interest (FAR, Part 3.104). Standards of Conduct and Codes of Ethics have tended to offer broader guidelines than the legal restrictions, but they have also

emphasized forbidden behaviors, rather than the decision making process for resolving ethical dilemmas.

Despite the wide range of ethical issues addressed by the JER and the Procurement Integrity Act, prior research at the Naval Postgraduate School has identified a need for a standardized ethics training curriculum which addresses acquisition issues to improve decision making skills for DOD acquisition employees (Quatroche, 1987; Wical, 1994). In *A Model Ethics Framework for the Navy Field Contracting System Work Force,* Quatroche recommends simplified standards tailored to contracting functions, reinforced by training which incorporates case studies and ongoing communication on ethical issues in the acquisition workplace. More recently, *A Model Ethics Program for a Department of Defense Contracting Office* (Wical, 1994) suggests that a "code of contracting ethics" be compiled to support a standardized contracting office ethics training program.

This thesis will continue the research progression from the general definition of an acquisition ethics program to development of a specific program element. Quatroche, defines four elements for a contracting ethics program: Policy, Controls, Training and Policy, and Audit (Quatroche, 1987, p.52). Wical identifies the important ethics program elements and issues in a contracting ethics program as: (1) a "Code of Contracting Ethics" assimilated with the DOD Standards of Conducts into a single Code of Conduct, (2) Internal Controls, (3) Quarterly Training, and (4) Internal/External Auditing (Wical, 1994, p.65) . Quatroche and Wical have each provided the framework for an acquisition ethics program. Identification and analysis of ethical dilemmas faced by acquisition employees will add to that framework and link ethical standards to practical application in decision making.

C. OBJECTIVES OF THE RESEARCH

The research will identify common ethical dilemmas faced by DOD acquisition employees and analyze the decision processes used to resolve the dilemmas. Resolution of these dilemmas will be examined in terms of the decision making skills used by the acquisition employee, the ethical values referenced, whether personal or organizational, and the consequences of the decision made to resolve the dilemma. Compilation of the

and the consequences of the decision made to resolve the dilemma. Compilation of the dilemmas will form the basis for acquisition ethical case studies which can be used to supplement and tailor current DOD ethics training. The case studies will consist of narratives collected from DOD acquisition employees with accompanying analysis of the ethical dilemmas and a discussion of the decision making processes used to resolve the ethical dilemmas.

D. RESEARCH QUESTIONS

The thesis research will answer the following Primary and Subsidiary questions:

1. Primary

What are common ethical dilemmas faced by DOD acquisition employees and how might these ethical dilemmas be resolved?

2. Subsidiary

a. What are some of the decision making processes used by acquisition employees to resolve ethical dilemmas?

b. What can be learned from literature on managerial ethics that can provide both theoretical understanding and actual recommendations for managing ethical dilemmas in the DOD acquisition process?

c. What enhancements to existing ethical training frameworks can be recommended based on both literature and specific ethical dilemmas identified in this research?

d. What is the perceived adequacy of the Joint Ethics Regulation (JER) as a guideline for resolution of ethical dilemmas faced by DOD acquisition employees?

E. SCOPE

1. Type of Data

This research will be descriptive, providing a compilation of personal narratives about ethical dilemmas. The data, personal narratives, were gathered from DOD acquisition employees; personal interviews have been deemed to be the most appropriate means of collecting these data. As this research is concerned with the perceptions, feelings, and attitudes of DOD acquisition employees, analysis of the narratives will be from a qualitative perspective, focusing on the process of ethical decision making.

2. Source of Data

The source for the data was primarily Navy contracting activities. The heads of contracting offices have specifically been targeted as it is expected that they have the broadest perspective of the acquisition workplace and are able to identify dilemmas which are "typical."

F. LIMITATIONS

1. Type of Data

The definition of "ethical dilemma" varies from individual to individual. Due to this subjectivity of the data, it is not intended that this research will identify the full range of possible dilemmas.

2. Source of Data

Time and funding constraints limited the size of the research sample. No attempts were made to randomly select research participants. As described in the Scope section above, the participants were pre-selected. Therefore, due to the purposive sampling method of collecting the data, the ability to generalize the results of this research will be decreased.

G. KEY DEFINITIONS AND TERMS

1. **Acquisition** - refers to the entire process of acquiring supplies or services, beginning with the identification of a requirement and including the awarding of contracts to meet the requirement (FAR, Part 2.101).

2. **Contracting** - the purchasing, renting, leasing or otherwise obtaining supplies or services (FAR, Part 2.101). For the purpose of this thesis, the terms **Procurement**, and **Purchasing**, will be used synonymously with **Contracting.**

3. **Ethics** - standards of conduct which indicate how one should behave based on moral duties and virtues arising from principles about right and wrong (Josephson, 1993).

4. **Values** - the various beliefs and attitudes which determine how a person actually behaves. This term embraces the full range of beliefs and desires that motivate behaviors. "Some values concern ethics because they pertain to beliefs as to what is right and wrong. Most values do not." (Josephson, p.8)

5. **Code of Ethics** vs. **Code of Conduct** - "... if ethics is a system of beliefs about right and wrong, a **code of ethics** should be a list of beliefs, not a list of rules and regulations about behavior. A **code of conduct** would more properly be the title of a list of rules about behavior." (Coates, 1993, p. 35) The distinction between the two is seldom made in practice; for the purpose of this thesis, codes of ethics will be differentiated from codes of conduct.
6. **Ethical Dilemma** - A situation caused by a conflict of values, requiring a person to decide on one course of action over another course of action.

H. RESEARCH METHOD

A thorough survey of the literature was performed, starting with related Naval Postgraduate School research. Theoretical discussions of ethics were examined to provide a foundation for review of applied theory, ethics legislation, and ethical training.

The type of data collected were personal narratives which the researcher recorded and later analyzed. Data were collected by means of on-site interviews at several Navy contracting activities. The purpose of the interviews was to identify (1) common ethical dilemmas faced by DOD acquisition employees, and (2) the decision process used to resolve the dilemmas. Chapter IV provides additional information on the design and intent of the research method.

I. ORGANIZATION OF STUDY

This thesis discusses common ethical dilemmas as identified by DOD acquisition employees. Analysis of the decision making used to resolve the dilemmas formed the basis of case studies to be used in an ethical training curriculum. Chapter I has defined the purpose, need, and specific research questions to be addressed. Chapters II through VII will set forth the conduct of the study.

Chapter II, Background, summarizes acquisition legislation relating to ethics.

Chapter III, Literature Review, presents an overview of journal articles, reports, studies, and research on ethics in Government acquisition and business ethics in civilian industry. The literature review will also discuss issues in training ethical decision making. Questions to be addressed in Chapter III are:

1. How does the literature define ethics?
2. Why are ethics important?

3. How does an individual or an organization institute and maintain an ethical environment?
4. How is ethical behavior taught?
5. What are some models for ethical decision making?

Chapter IV, Research Method, presents the interview format and questions. In addition, the chapter describes the procedures used in gathering the data - personal narratives of ethical dilemmas.

Chapter V, Data Presentation and Analysis, exhibits the personal narratives collected from the interviews and examines and analyzes the decision making process found in the narratives.

Chapter VI, Ethical Case Studies, gives an outline for an acquisition ethics training module using case studies of the narratives gathered in the research.

Chapter VII provides conclusions and recommendations resulting from this study, as well as suggestions for further research.

II. BACKGROUND

A. GENERAL

This chapter summarizes Governmental codes of ethics and codes of conduct. As defined by Coates, codes of ethics provide statements of beliefs, and codes of conduct list rules about behavior (Coates, 1993). Such Governmental codes have evolved from a general recognition of desirable behaviors for Government employees and identification of behaviors that should be avoided. Concurrent with the general recognition of desirable and undesirable behaviors has been the formulation of legislation which has become the primary basis for codes of ethics and codes of conduct in Government.

Legislation aimed at defining and enforcing ethical behavior for Government employees has directed attention to a set of three core issues which comprise an implicit statement of Governmental ethical beliefs. These core issues are first, the sacredness of public trust, secondly, separation of private and public interest, and thirdly, the importance of Government employees' avoidance of even the appearance of wrongdoing. Numerous pieces of legislation have addressed these same issues, and with each new directive, added more and more specific restrictions (Sherman, 1991). As "list of rules about behaviors," the restrictions have framed codes of conduct in Government.

Acquisition employees, especially contracting officers, have the authority to decide where Government dollars go. This responsibility lends a significant amount of power to acquisition employees which must be carefully used. One purpose of acquisition legislation has been to prevent corruption of that power, through detailed itemization of what should and should not be done. As a result, members of the DOD acquisition workforce face an intimidating mountain of rules, regulations, and statutes which govern nearly every aspect of the acquisition function. From the constant stream of legislation from Congress, to the comprehensive compilation of directives contained in the Federal Acquisition Regulation (FAR), and the amplifying instructions given by the DOD and Service-specific supplements, the acquisition employee receives detailed instructions. The

instructions not only direct how the acquisition employee is to procure, but also strive to ensure that the acquisition process does not endanger public trust nor give the appearance of unfairness.

B. EARLY LEGISLATION: 1808-1809

1. Officials Not to Benefit

In 1808, as a result of congressmen using their positions to obtain Government contracts for firms in which they held an interest, a law was passed to include the "Officials Not to Benefit" clause in every Government contract. Still required today, the contract clause specifically stipulates that no member of congress might benefit from that contract. (Dobler, Burt, and Lee, 1990)

2. Procurement Act of 1809

Apparently the 1808 law was not sufficient to discourage abuses of Government procurement. Because "graft and favoritism in the award of Government contracts were commonplace," Congress passed the Procurement Act of 1809 which required that Government purchases be made by competitive bids (Dobler, Burt and Lee, 1990). Since 1809, Congress has enacted a multitude of procurement restrictions which address separation of private and public interests. One may assume that the Procurement of 1809 did not entirely eliminate "graft and favoritism."

C. EXECUTIVE ORDER 11222 OF MAY 8, 1965

President Johnson's signing of Executive Order 11222 laid the foundation for Government Ethical Standards of Conduct (Sherman, 1991). The main features of the Order were the requirement of all agencies to adopt ethics regulations and the requirement for periodic reporting of financial interests by senior officials. However, the financial disclosures did not have to be made public unless the employee's agency had compelling reasons to do so (Senate Hearings Report, 1988).

Part I - Policy, of the Executive Order, states the importance of gaining and keeping public trust:

> ...Each individual officer, employee, or adviser of government must help to earn and must honor that trust by his own integrity and conduct in all official actions (Senate Hearings Report, 1988, p.259).

Part II - Standards of Conduct, lists specific prohibited actions. The first restricted action is the receipt of gifts from anyone who:

> (1) has, or is seeking to obtain, contractual or other business or financial relationships with his agency;
> (2) conducts operations or activities which are regulated by his agency; or,
> (3) has interests which may be substantially affected by the performance or nonperformance of his official duty.

The next issue addressed is the avoidance of the appearance of wrongdoing:

> It is the intent of this section that employees avoid any action, whether or not specifically prohibited..., which might result in or create the appearance of,
> (1) using public office for private gain;
> (2) giving preferential treatment to any organization or person;
> (3) impeding government efficiency or economy;
> (4) losing complete independence or impartiality of action;
> (5) making a government decision outside official channels; or
> (6) affecting adversely the confidence of the public in the integrity of the Government (Senate Hearings Report, 1988, pp.259-260).

Part IV- Reporting of Financial Interests, requires agency heads, presidential appointees, and full-time members of committees, boards, or commissions appointed by the President, to submit a statement with:

> (1) A list of the names of all corporations, companies,...nonprofit Organizations, and educational or other institutions,
> (A) with which he is connected as an employee, officer,...or consultant; or
> (B) with which he has any continuing financial interests,...; or
> (C) in which he had any financial interest through the ownership of stocks, bonds, or other securities.
>
> (2) A list of the names of his creditors, other than those to whom he may be indebted by reason of a mortgage on property which he occupies as a personal residence....

(3) A list of his interests in real property or rights in lands, other than property which he occupies as a personal residence (Senate Hearings Report, 1988, p. 261).

D. ETHICS IN GOVERNMENT ACT OF 1978

1. Financial Disclosure

The Ethics in Government Act of 1978 extended the financial disclosure rules of Executive Order 11222 to the Legislative and Judicial branches of Government. It requires officials of the Executive, Legislative and Judicial branches of Civil Service grade of GS-16 and above, or military rank of 0-7 and above, and contracting employees, to report annually their financial interests. In addition, this Act mandated, for the first time, that the financial disclosure be made public (Wical, 1994).

2. Office of Government Ethics

Title IV of the Ethics in Government Act established the Office of Government Ethics (OGE) to ensure compliance with ethics rules throughout the Executive Branch (Senate Hearings Report, 1988). As part of its statutory authority, OGE's responsibilities include :

- developing and interpreting the rules and regulations pertaining to the identification, review and resolution of conflicts of interest and ethics in the executive branch;
- monitoring, reviewing and investigating compliance with the financial disclosure statement;
- ordering corrective action on the part of agencies and employees;
- evaluating the need for changes in conflict of interest laws promulgated by OGE as well as by other agencies.
- providing information on and promoting an understanding of ethical standards in executive agencies (Senate Hearings Report, 1988, p. 257).

Implied in the responsibilities assigned to the OGE is the necessity to "inquire into, review, and analyze allegations of wrongdoing, particularly when they relate to high-level officials." (Senate Hearings Report, 1988, p. 116)

E. ESTABLISHMENT OF INSPECTOR GENERAL: 1978 AND 1983

1. Inspector General Act of 1978

Public Law 95-452, Inspector General Act of 1978, established Offices of Inspector General (OIG) within 12 Federal civilian agencies. Included in their statutory purpose is an objective to "...prevent and detect fraud and abuse...(Blue Ribbon Commission Report, 1986, p.142)." The Inspector General Act's concurrent enactment with the Ethics in Government Act marks 1978 as a year of deep concern about how the Government conducts its business.

2. Defense Authorization Act of 1983

Under the Defense Authorization Act of 1983, Public Law 97-252 created the Department of Defense Inspector General (DODIG). Responsibilities assigned to the DODIG focus more directly on fraud, waste, and abuse issues than do the responsibilities of the civilian OIGs. Four subsections of Public Law 97-252, Title XI delineate DODIG's role in combating fraud, waste, and abuse:

(1) Be the principal adviser to the Secretary of Defense for matters relating to the prevention and detection of fraud, waste and abuse in the programs and operations, of the department;

(2) Initiate, conduct, and supervise such audits and investigations in the Department of Defense (including military departments) that the Inspector General considers appropriate;

(3) Provide policy direction for audits and investigations relating to fraud, waste and abuse, and program effectiveness;

(4) Investigate fraud, waste and abuse uncovered as a result of other contract and internal audits, as the Inspector General considers appropriate; (Blue Ribbon Commission Report, 1986, p.142).

The reason for the increased emphasis on fraud, waste, and abuse may have been a function of increased Congressional concern in the five years interval from its enactment of the Inspector General Act of 1978. Or, it may have been simply the need to protect the resources flowing through the Department of Defense, which holds the largest portion of the Federal budget. In either case, the establishment of the DODIG represented another legislative attempt to enforce ethical behavior.

F. DEFENSE AUTHORIZATION ACT OF 1985

Public Law 99-145 under the Defense Authorization Act of 1985 sought to limit the "revolving door" of employment between Defense and private industry. It required former Government personnel to report any employment with a defense contractor that they accepted within two years of their leaving Government service. This public law also restricted discussions about employment opportunities between a contractor and any Government employee who has performed a procurement function relating to that contractor's contract (Sherman, 1991).

Acquisition professionals, in Government or affiliated with private industry, recognized the necessity of preventing the lure of future employment from influencing procurement decisions. However, it was feared that the limitations in post-Government employment would negatively impact "the government's ability to attract and retain the highly qualified people needed for efficient senior management of defense acquisition." (Blue Ribbon Commission Report, 1986, p.25) Whether those fears have been realized is beyond the scope of this study, however, it may be assumed that the significant decrease in Defense acquisition programs since PL 99-145 was enacted should have lessened the impact of that law.

G. BLUE RIBBON COMMISSION 1985-1986

1. Purpose

President Reagan established the Blue Ribbon Commission on Defense Management by Executive Order 12526 on July 15, 1985 (Sherman, 1991). The President directed the Commission, chaired by David Packard, to examine the management policies and practices of the Department of Defense. Specific attention was to be given to the acquisition process. As stated in the Executive Order the Commission was to:

1. review the adequacy of the defense acquisition process, including the adequacy of the defense industrial base, current law governing Federal and Department of Defense procurement activities, departmental directives and management procedures, and the execution of acquisition responsibilities within the Military Departments (Sherman, 1991, p.34).

2. Recommendations

In its June 1986 Conduct and Accountability Report to the President, the Commission recommended that (1) DOD develop and periodically review the status of conduct directives, (2) provide specific guidance for conflict of interest issues, employment negotiations, and other acquisition ethical issues, and (3) "vigorously administer and enforce ethics requirements for all employees." The Commission also recommended that acquisition personnel be given copies of pertinent standards of conduct at least annually. These recommendations later formed the basis of the Procurement Integrity Act of 1988.

H. PROCUREMENT INTEGRITY ACT OF 1988

The Procurement Integrity Act of 1988 arose out of the infamous DOD "Ill Wind" procurement scandals. The May 1988 investigation revealed that senior DOD procurement officials and former Government employees, acting as consultants, had exchanged competing contractors' information for contract awards (Sherman, 1991). Three issues of particular concern came out of the scandal: (1) post-Government employment, (2) acceptance of bribes, and (3) disclosure of competing contracting information.

Repeating the themes found in earlier legislation, Congress, through enactment of the Procurement Integrity Act wanted to regain the public trust, more definitely separate private and public interests of procurement officials, and reemphasize the importance of perceived wrongdoing. As a result, the Act added more detailed stipulations to already prohibited conduct.

In addressing the the "revolving door" restrictions given in Public Law 99-145, the Act states that no Government procurement official shall knowingly,

> (1) Solicit or accept, directly or indirectly, any promise of future employment or business opportunity from, or engage, directly or indirectly, in any discussion of future employment or business opportunity with, any officer, employee, representative, agent, or consultant of a competing contractor.... (FAR, Part 3.104.b-1).

Furthermore, the Act set a two-year moratorium on post-Government employment for

procurement officials. This restriction applied to employment with contractors who had participated in procurement actions in which the procurement official "personally and substantially" took part (FAR, Part 3.104-3-b3).

Bribery, another feature of the "Ill Wind" scandal, also receives particular attention in the Procurement Integrity Act. Procurement officials, during the conduct of a procurement are directed not to:

> Ask for, demand, exact, solicit, seek, accept, receive, or agree to receive, directly or indirectly, any money, gratuity, or other thing of value from any officer, employee, representative, agent, or consultant of any competing contractor for such procurement (FAR, Part 3.104-b2).

And finally, the procurement employee is directed not to,

> Disclose any proprietary or source selection information regarding such procurement directly or indirectly to any person other than a person authorized by the head of such agency or the contracting officer to receive such information (FAR, Part 3.104-b3).

I. DOD JOINT ETHICS REGULATION: 1993

The DOD Directive 5500.7-R, the Joint Ethics Regulation (JER) consolidates the laws, policies, and procedures for Standards of Ethical Conduct for DOD employees (Wical, 1994). Consisting of twelve chapters, the 185-page regulation addresses such issues as travel benefits, conflicts of interest, and political activities. Its stated purpose is to provide a "...single source of standards of ethical conduct and ethics guidance...." (JER, p.1) Additionally, the JER includes the "Procurement Integrity Act" provisions from Section 27 of the Office of Federal Procurement Policy Act which apply specifically to acquisition employees.

The JER presents 14 "General Principles" which begin with a statement of the basic obligation of public service and end with a caution against creating the perception of wrongdoing:

> (1) Public service is a public trust, requiring employees to place loyalty to the Constitution, the laws and ethical principles above private gain.
>
> (14) Employees should endeavor to avoid any actions creating the appearance that they are violating the law or ethical

standards set forth in this part....

General Principles (2) through (13) are listed below:

(2) Employees shall not hold financial interests that conflict with the conscientious performance of duty.

(3) Employees shall not engage in financial transactions using nonpublic Government information or allow the improper use of such information to further any private interest.

(4) An employee shall not, ... solicit or accept any gift or other item of monetary value from any person or entity seeking official action from, doing business with, or activities regulated by the employee's agency, or whose interests may be substantially affected by the performance or nonperformance of the employee's duties.

(5) Employees shall put forth honest effort in the performance of their duties.

(6) Employees shall not knowingly make unauthorized commitments or promises of any kind purporting to bind the Government.

(7) Employees shall not use public office for private gain.

(8) Employees shall act impartially and not give preferential treatment to any private organization or individual.

(9) Employees shall protect and conserve Federal property and shall not use it for other than authorized activities.

(10) Employees shall not engage in outside employment or activities, including seeking or negotiating for employment, that conflict with official Government duties and responsibilities.

(11) Employees shall disclose waste, fraud, abuse, and corruption to appropriate authorities.

(12) Employees shall satisfy in good faith their obligations as citizens, including all just financial obligations, especially those --- such as Federal, State, or local taxes --- that are imposed by law.

(13) Employees shall adhere to all laws and regulations that provide equal opportunity for all Americans regardless of race, color, religion, sex, national origin, age, or handicap.

J. SUMMARY

Chapter II has summarized legislation which pertain to ethics, particularly in the acquisition workplace. The chronological overview of efforts to define and enforce ethical behavior reveals a repetition of core issues, which can be collectively thought of as a code of ethics for Government employees. Whether implied or explicitly stated, the core issues addressed by ethics legislation are (1) the necessity of gaining and keeping public trust, (2) separation of private and public interests, and (3) the importance of avoiding the appearance of wrongdoing as well as the wrongdoing itself.

In general, the laws and Executive Orders have been generated in response to scandals or to close loopholes which allowed unethical, but legal behavior. Legislation has evolved into more and more detailed directives which attempt not only to correct past legal deficiencies but strive to eliminate any elasticity of interpretation. As a result, the compilation of standards of conduct encompassing the rules, regulations, and statutes regarding ethical behavior combine to form a very bulky Joint Ethics Regulation.

III. LITERATURE REVIEW

A. INTRODUCTION

Coates' (1993) distinction between codes of ethics and codes of conduct allows one to separate core beliefs about right and wrong (codes of ethics), from directives that determine how ethical behavior is practiced (codes of conduct). This separation allows decision makers to analyze ethical dilemmas in terms of ethical values and not just in terms of rules, especially for those situations not addressed by the rules. Chapter II, Background, focused primarily on codes of conduct. This chapter focuses on codes of ethics and examines how they define right and wrong, beginning with a discussion of traditional ethical theory which presents three views of ethics: absolutistic, utilitarian, and humanitarian. Kohlberg's theory of ethical development offers an explanation for what motivates people to be ethical. Definitions of ethics are then examined for their synthesis of the ideas given by traditional ethical theory.

Next, an overview of business ethics traces the evolution of ethical principles, and examines how the ethical principles have been implemented through standards of conduct. From a broad perspective, the DOD acquisition function differs from private business in the responsibility to adhere to the principles of an implied Government code of ethics as identified in Chapter II: sacredness of public trust, separation of private and public interests, and the importance of Government employees' avoidance of the appearance of wrongdoing. However at the working level, ethical issues of the DOD acquisition function parallel those of the commercial purchasing function.

Finally, this chapter ends with a review of Harold F. Gortner's study of ethical decision making by Federal public managers. Gortner has identified five factors which influence Government manager's decision making: law, organizational dynamics, individual characteristics, professional codes, and philosophical or cultural values (Gortner, 1991). These five factors, along with the ideas found in traditional ethical therory, will be used in Chapter V, Data Presentation and Analysis, to analyze data collected in this study.

B. ETHICS THEORY

Any discussion of ethics must begin with Immanuel Kant (1724-1804), who constructed the *Categorical Imperative* theory, and John Stuart Mill (1806-1873) the father of the theory of utilitarianism. Their two views of ethics represent the extremes of ethical theory and provide the parameters for analysis of ethical behavior.

1. Kant's Categorical Imperative and Absolutism

The Categorical Imperative places the foundation of ethics on the idea of valid, absolute moral rules which can be determined by reasoning alone. Under the Categorical Imperative, for a moral rule to be absolute it must first be logically consistent. For example, a rule which declared apples to be oranges would be logically inconsistent. The second requirement for an absolute moral rule is that it must be a universal truth; in other words, it must be a truth that all persons can follow (Thiroux, 1980). Using lying as a test of Kant's Imperative, if one stated, "everyone must lie" as an absolute moral rule it would fail under the test of universality because, if everyone followed the rule and no one told the truth, basic societal functions such as communication, and business transactions would disintegrate.

Brady uses the term, "formalism" to refer to traditional religious moral codes as well as Kant's Categorical Imperative. In his analysis of formalism, Brady cites its universality as the primary source of its advantages: "a system of known principles, which provide direction and stability" (Brady, 1990, p.53). While Kant's Categorical Imperative provides for a basic universal core of ethical values, it does not recognize any exceptions to the absolutes, nor does it address conflicts between two equally absolute rules (Thiroux,1980). Due to the inflexibility of the Categorical Imperative and other ethical codes based on absolutism, they can become overly complex as a result of attempts to develop principles which apply to every situation (Brady, 1990). When developing ethics codes, it might be good to remember that there are only Ten Commandments.

2. Utilitarianism

Utilitarianism defines an act as moral if it is useful "in bringing about a desirable or good end" (Thiroux, 1980, p. 42). As an ethical theory where "the ends justify the means," utilitarianism gives a moral system without any of the rigid requirements of the Categorical Imperative. As a statement of the objective of utilitarianism Kidder offers,

> Do whatever produces the greatest good for the greatest number...It [utilitarianism] demands of us a kind of cost-benefit analysis, determining who will be hurt and who helped and measuring the intensity of that help. (Kidder,1994, p.24)

It would seem that utilitarianism provides a perfect alternative absolutism's concept of rigid principles that are not easily adapted to ambiguous situations. However, utilitarianism's strengths as a practical theory - its flexibility and its reliance on quantifiable benefits- make it inadequate as the sole basis for an ethics code. First, as Brady points out, "the minimal consideration given to non-quantifiable factors distorts analysis." The very selection of costs and benefits can vary due to "non-quantifiable factors," resulting in different predictions of consequences. Secondly, utilitarianism is not a moral theory because, "... no action is good in itself - only good for some end," (Brady, 1990, p.106). Utilitarianism recognizes exceptions based on the context of a situation, and prioritizes acts based on the "goodness" of the consequences. However, with its reliance on determining and assigning moral value to only the consequences of an act, it poses difficulty for standardization of behavior:

> One last criticism of act utilitarianism is how one is to educate the young or the initiated to act morally since there are no rules or guides to follow except one: that each person must assess what would be the greatest good consequences of each act for each situation that arises (Thiroux, 1980, p. 43).

3. Care-based Thinking/ Humanitarianism

Kidder defines a third view of ethics - care-based thinking - in addition to utilitarianism and absolutism. This third view uses the Golden Rule, "Do to others what you would like them to do to you," as its guiding principle (Kidder, 1994, p.25). Based on

the concept of reversibility, a decision would be ethical if the decision maker would accept the reciprocated action. This view works best in situations where the action is a universally recognized positive value or is equally desired by the giver and receiver of a decision. However, it does not account for those situations where the ethical decision may not be welcomed by the receiver. Tax audits, draft notices, or other fair distributions of unwanted "gifts" would be examples of exceptions to the Golden Rule.

In a broader application of the Golden Rule, Coates offers another humanitarian view of ethics, social justice, which is "concerned with fairness in the distribution of society's burdens and benefits." (Coates, 1993, p.29) According to Coates, social systems of ethics focus on rights and justice, the ideas of which "develop over time and evolve as society evolves (Coates, 1993, p.29).

4. Kohlberg's Moral Developmental Stages

Lawrence Kholberg's hierarchy of ethical development stages suggests that a person's ethical development is an evolutionary process. While all people do not move to the highest stages, external influences, such as societal principles can and do impact a person's ethical development. In brief, Lawrence Kohlberg's theory defines six moral developmental stages. The first stage, considered to be the most immature, describes a person whose motivation for doing "good" comes from a fear of punishment or a desire for reward. The second stage emphasizes self-gratification as an incentive for moral behavior, and is closely related to the third stage where group acceptance and approval are the primary incentives. Respect for law and order and recognition of higher societal principles, represent Kohlberg's fourth and fifth stages of moral maturity. The last, and most mature stage is acknowledgment and acceptance of universal ethical principles (Gortner, 1991; Brady, 1990).

C. DEFINING ETHICS

Because it is based on abstract ideas of "goodness," the concept of ethics can be difficult to define. One could avoid the attempt to formulate a definition of ethics, using

Kidder's rationalization:

> This process of definition is the stuff of academic discourse. And while it comprises a perfectly valid exercise, it is of little use to those seeking ethical fitness. Why?...First, most people already have a working understanding of good....The second reason to avoid overloading on definitional problems is simply that at bottom, ethics is not about definitions....It's about inner impulses....(Kidder, 1994, p.63).

Notwithstanding Kidder's assertion that ethics definition is not necessary for practical application of ethical values, defining ethics provides a foundation for deciding what is ethical, especially in complex situations. In general, definitions of ethics incorporate concepts from both absolutism and utilitarianism. First, definitions presume the existence of absolute moral rules or beliefs that form the basis for ethical systems. Secondly, definitions allude to guidance systems and standards which allow moral rules to be adapted to specific situations.

James Bowman offers,

> ...ethics is action, the way we practice our values, a guidance system to be used in making decisions. ethics exists in the gap between the "is" and the "ought." (Bowman,1991, p.2)

Bowman's definition implies that ethics is more than a static code against which a person evaluates the elements of an ethical situation before making a decision. A "guidance" system allows greater flexibility than a system that consists solely of strict tenets. However, effective use of a "guidance" system for resolution of ethical situations requires well-developed decision making skills.

Josephson (1993) divides ethics into two components; "the first requires an ability to discern right from wrong, the second involves the commitment to do what is right." (Josephson, 1993, p.4) Josephson, more emphatically than Bowman requires that ethical knowledge be acted upon. He links knowledge to action with his definition of integrity:

> Integrity refers to the ethical principle of moral wholeness, of consistency between principles and practices (Josephson, 1993, p.14).

F. Neil Brady offers a hybrid of two perspectives, utilitarianism and formalism, in

what he terms "Practical Formalism." In brief, Brady's "Formalist Methodological Cycle" consists of four segments: (1) a moral or legal law, (2) articulation of principles, (3) actual or conceived cases which validate the principles, and (4) a constitution-like set of core values. (Brady, 1990). Brady's model for ethical thinking treats ethics as an evolution of ideas rather than as a fixed set of principles. It is the third segment, actual or conceived cases, which acts as a catalyst for modifications to the law and stated principles as new ethical issues become apparent.

D. ETHICAL DECISION MAKING

For any ethical situation, it is the analysis of the consequences and determination of the "rightness" or "wrongness" of an action which challenges ethical decision making skills. One can choose a course of action as a result of a determination that it is the fairest course of action and promotes social justice (care-based/humanitarianism), or that it will yield the most benefits (utilitarianism), or base a decision on a pre-established standard of values or conduct (formalism).

A review of literature has uncovered many models for making ethical decisions. Typically the models begin the decision making process with an identification and definition of the problem or dilemma. After defining the problem, the decision maker lists alternative actions and their representative values. Next, the decision maker ranks the alternative actions in order of moral desirability and feasibility and chooses the best course of action (Brady, 1990; Coates, 1993; Josephson, 1993). The Josephson Institute of Ethics offers "five steps to principled reasoning (Josephson, 1993, pp. 39-41):"

1. **Clarify**: Determine precisely what must be decided. Formulate and devise the full range of alternatives.

2. **Evaluate**: If any of the options require the sacrifice of any ethical principle, evaluate the facts and assumptions carefully.

3. **Decide**: After evaluating the information available, make a judgment about what is or not true, and about what consequences are most likely to occur.

4. **Implement**: Once a decision is made on what to do, develop a plan of how to implement the decision in a way that maximizes the benefits and minimizes the costs and risks.

5. **Monitor and Modify**: An ethical decision maker should monitor the effects of decisions and be prepared and willing to revise a plan, or take a different course of action, based on new information.

E. TEACHING ETHICS

One question that needs to be addressed is whether ethics can be taught. As an argument against teaching ethics, one can take the pessimistic view which holds that a person's sense of ethics solidifies early in life and cannot be altered after a certain age. The extreme converse would hold that a person's sense of ethics, including core beliefs, constantly changes. The first case could describe someone who possessed a very rigid set of ethical principles; the second case could describe someone whose ethical values were constantly changing and could even be altered to fit any immediate expediency.

1. Academic Ethics Training

In answering the argument that it is too late to raise questions of values and corporate purposes with MBA students in their twenties and thirties, Piper cites the academic environment as a valuable opportunity for teaching ethics (Piper, 1993). By emphasizing and reinforcing the idea that ethical decision making is important, ethical thinking can be nurtured. The Harvard Business School's "Decision Making and Ethical Values: An Introduction" module seeks to raise ethical awareness through the following objectives:

> First, it discusses the breadth of responsibility of the modern corporation and the constraints and trade-offs that attend the exercises of that responsibility. Second, it emphasizes the centrality of ethical values in the context of individual and organizational effectiveness. Third, it demonstrates the dangers of ignoring the impact of business decisions and strategies on the full range of stakeholders; indeed, it encourages the incorporation of ethical values and stakeholder analysis in the broadest range of business decision making. Fourth, it encourages respect for law. Fifth, it provides a process for evaluating the economic and noneconomic consequences of proposed decisions, strategies, and implementation plans.

> Sixth and most important, the module signals the centrality of these issues, legitimizes their discussions....(Piper, 1993, p. 138).

2. Ethics Training in the Workplace

For incorporation of ethical training in the workplace, traditional methods of teaching employees ethical behavior fail. Specifically, the teaching of ethical codes has been to list prohibited behaviors and then to imply that only experts can deal with ethical issues by emphasizing ethics hotlines and organization ethics counsellors to resolve ethical dilemmas (Rice and Dreilinger, 1990). A more effective ethical training program will provide employees with the "tools to identify and work out ethical issues," and "teach employees how to sell their solutions to others," (Rice and Dreilinger, 1990). The first objective, teaching how to identify potential issues can be met by "a set of structured questions" such as:

> What, if any, are the aspects of this situation that might have ethical consequences for me personally, for my superior, for the members of my work group, for my organization, and for society as a whole?
> (Rice and Dreilinger, 1990, p. 106)

The second objective, teaching employees how to "sell" solutions, uses structured questions which attempt to define an ethical solution in terms of feasibility, benefits, and the cost to implement.

Paramount to the success of an ethics training program is first, the support and reinforcement by those at the top of an organization. By ensuring that high-level managers actively support and practice the tools imparted by ethics training, the organization can make ethics an integral part of its organization and not just an auxiliary afterthought.

F. BUSINESS ETHICS

1. General

Ethical conduct has long been recognized as a desirable characteristic of the business corporation. Even in a society which esteems the principles of capitalism, it is recognized that the responsibility of a business firm goes far beyond that of generating

profits. While the interpretation of the extent and specific duties of that social responsibility undergoes constant revision, the existence of that responsibility is not questioned. Aguilar puts forth his premise that it is not only desirable for a corporation to conduct its business ethically, but also beneficial to do so. He cites such benefits of an ethical corporation as,

> ...the sense of personal pride and satisfaction that people can derive from being a part of a fair-minded organization; the avoidance of costly litigation and crippling scandals, improved corporate relationships with customers, suppliers, investors, and the community at large; and the generation of conditions that favor individual and organizational creativity and initiative (Aguilar, 1994, p.144).

Ethical conduct remains the preferred course of action, even in an unethical environment. Despite Machiavellian tactics which seem crucial to business success, a mutually recognized code of ethics, encompassing such virtues as honesty, truth, reliability, etc., is necessary to prevent anarchy.

Even a casual observation of the current business environment shows that Brady's theoretical cycle of Practical Formalism provides an accurate description of the evolution of business ethics, for both the commercial and Government sector. One has only to find the wealth of "actual or conceived cases" in the 1980's which provoked changes to laws and ethical principles to trace the "Formalist Methodological Cycle." There is a consensus in current literature that ethical failures during the 1980's, such as insider- trading on Wall Street and Defense Contracting improprieties by both Government and commercial agents, have increased interest in ethical behavior in business. One notable example is the impetus of the insider trading scandals which led John S. R. Shad, Chairman of the Securities and Exchange Commission, to endow his alma mater, the Harvard Business School, with a substantial gift for establishment of a program in ethics and leadership (Piper, 1993, p. ix).

2. Evolution of Business Ethics

William Frederick divides the evolution of American business ethics into three periods. The first period, spanning from the 1920's until the 1960's embodied the ideas of

corporate social responsibility, the second period, from the 1970s until the mid-1980's focused on corporate social responsiveness. Finally, the current period of business ethics represents an attempt to develop corporate social rectitude. (Frederick, 1987)

a. *Corporate Social Responsibility*: 1920s-1960s

Corporate social responsibility encompassed two major principles, charity and stewardship. As the focal point of the community, the corporation became a principal benefactor for charitable support - a role that has continued to be a significant one for corporations:

> From this time on, charitable obligations to the unfortunate were seen as an important additional responsibility incurred by the business community (Frederick, 1987, p. 143).

Closely related to this role of social benefactor was the principle of stewardship, which gave corporations the responsibility of managing society's scarce resources:

> Derived from an ancient, even biblical, precept, it [stewardship] allowed corporate executives to view themselves as stewards or fiduciary guardians of society's resources (Frederick, 1987, p.143).

b. *Corporate Social Responsiveness*: 1970s-mid-1980s

The next period of business ethics, defined as corporate social responsiveness, came out of social changes brought about by the civil rights activists, environmentalists, consumer advocates, and other similar demands for reform:

> These demands were penetrating and threatening, challenging the inner precincts of corporate power, authority, and privilege. Failure to respond fully and effectively could unhinge the system (Frederick, 1987, p. 148).

In general, corporate social responsiveness attempted to answer such questions as,

> What does the law require me to do about discrimination, industrial accidents, environmental pollution, and the host of similar problems plaguing society? What have Congress and the state legislatures set as targets? What regulatory standards have been issued? What have the courts ruled? What does general public opinion support? (Frederick, 1987 p.152)

c. *Corporate Social Rectitude* mid-1980s- present

Frederick defines the current goal of business ethical thinking as a move toward corporate social rectitude, where the corporation acts beyond responsibility and responsiveness:

> Society wants corporations to act with rectitude, to refer their policies and plans to the most fundamental moral principles of humankind (Frederick, 1987, p. 157).

Corporate social rectitude comprises two components, the first is a value component which defines the inherent principles of a corporation such as profit, economic growth, technical efficiency and financial performance (Frederick, 1987, p. 154). The other component, referred to as the ethical component, addresses social needs and values.

3. Business Ethics Principles

Steidlmeir does not view business ethics as separate from traditional market values. Rather, he describes business ethics as an outgrowth from market values. He summarizes business ethical positions into seven ethical rules (Steidlmeier, 1987, p.110):

1. Protecting the interests of property owners by promoting efficiency, reducing costs, thereby increasing profits.
2. Encouraging respect for the rights of private property.
3. Refraining from anticompetitive practices.
4. Guarding the freedom of labor, owners, and consumers, and discouraging government interference.
5. Honoring contracts and refraining from fraud or coercion.
6. Developing personal honesty, responsibility and industriousness.
7. Encouraging private contributions.

These ethical positions represent the guiding principles for most business firms and have been encapsulated in corporate statements of ethical codes, in one form or another.

4. Ethics Implementation: Ethics Codes

The crystallization of practical ethical guidelines from abstract ethical ideas has taken place in the formulation of business ethics codes of conduct. As Wiley notes, "codes

of ethics are probably the most visible sign of a company's ethical philosophy." (Wiley, 1995, p.28) The first codes appeared around 1900, in response to late eighteenth century labor, and by the 1950s addressed issues of compliance with antitrust laws. Use of ethics codes became more extensive through the 1970s and 1980s (Weaver, 1993, p.45).

a. *Incentives for Ethics Codes*

Federal sentencing guidelines that became law in November 1991 provided corporations with irresistible incentives for implementing ethics programs (McKee, 1992). The guidelines require judges to pass stiff penalties, for such crimes as fraud, labor and safety violations, on an organization - whether a commercial entity or a Government agency - unless the organization can prove that "it exercised due diligence in preventing such offenses." A formally implemented ethics program may be viewed as evidence of "due diligence," and is one means of obtaining a significantly lighter sentence for wrongdoing. An ethics program was deemed adequate for consideration as proof of due diligence if it incorporated specific elements such as, publication of a standards for ethical conduct, formal training for all employees, enforcement of the standards by high-level employees and prevention and detection procedures which protected whistleblowers from reprisal (McKee, 1992, p.12). The Federal sentencing guidelines have made ethical codes not only desirable for altruistic reasons, but also as sound business investments:

> ...federal corporate sentencing guidelines in the U.S. have made ethics code implementation financially important to any firm which suspects that it might at some point intentionally or unintentionally transgress federal law. Codes may be intended to convince regulators (or potential regulators) that a firm or industry is reliably self-policing, so that regulation is redundant, or even harmful (Weaver, 1993, p.47).

While the impact of the Federal sentencing guidelines on the number of new business ethics codes has not been researched, it is interesting to note that from 1990 to 1995 the percentage of the 1,000 largest U.S. companies who have ethics programs rose from 35% to 45% (Wiley, 1995).

b. ***Content of Ethics Codes***

In her 1992 study of business codes of ethics, McKee determined the primary areas of concerns based on the frequency of their appearance in codes. The content of corporation ethics codes reiterate the ethical positions identified by Steidlmeier (1987). The following concerns were addressed by 50% or more of research respondents (McKee, 1992, p.44):

Conflict of Interest
Accuracy of Data, Records, and Reports
Accuracy of Invoices/Proper Payments (bribes, kickbacks)
Business Hospitalities General
Political Contributions
Receiving Business Hospitalities
Reporting/Resolving Violations
Customer/Supplier Relationships

Corporations identified as Government contractors included two additional areas of concern: Receipt and Use of Government Information and the Hiring of Former Government Employees.

c. ***Measuring Effectiveness of Ethics Codes***

Of course, the mere existence of an ethical program does not guarantee that a corporation operates ethically. However, establishing measures of effectiveness for ethics programs seems nearly impossible. It would be difficult, for example, to determine how many "bad" or "wrong" decisions have been avoided as a result of guidelines provided by an ethics programs. Weaver recounts several problems with attempts to measure the effectiveness of a company's ethical program:

> High-level managers' perceptions of ethics codes effectiveness similarly may be biased....Seemingly objective measures of ethical or unethical behavior, such as records of "hot-line" complaints and queries, may not uncover the actual level of ethical behavior in an organization. Social desirability biases can affect such reports. But a reverse social desirability bias also may occur. Previously unreported actions may become highly visible insofar as new understandings or sensitivities become institutionalized in an organization or society.... (Weaver, 1993, pp.49-50).

Yet, the importance of having such guidelines coupled with a heightened sense of what is ethical cannot be denied.

5. Ethics in Purchasing

a. *Standards of Purchasing Practice*

The latest revision of the National Association of Purchasing Management (NAPM) Standards of Purchasing Practice echo those business ethical positions identified by Steidlmeir, and corroborate the principles set forth in the Procurement Integrity Act. A summary of the NAPM Standards is listed below (Sherman, 1991, pp. 365-366):

1. Avoid the intent and appearance of unethical practice.
2. Demonstrate loyalty to the employer by diligently following the lawful instructions of the employer.
3. Refrain from any private business or professional activity that would create a conflict of interest.
4. Refrain from soliciting or accepting money or gifts which might influence, or appear to influence purchasing decisions.
5. Handle information of a confidential nature to employers and/or suppliers with due care.
6. Promote positive supplier relationships through courtesy and impartiality in all phases of the purchasing cycle.
7. Refrain from reciprocal agreements which restrain competition.
8. Know and obey the letter and spirit of laws governing the purchasing function.
9. Encourage that all segments of society have the opportunity to participate by demonstrating support for small, disadvantaged and minority-owned businesses.
10. Discourage purchasing's involvement in employer sponsored programs of personal purchases which are not business related.

11. Enhance the proficiency and stature of the purchasing profession by acquiring and maintaining current technical knowledge and the highest standards of ethical behavior.

b. *Ethical Issues in Purchasing*

As with Government procurement, the purchasing function of corporations has received particular attention for implementation of ethical guidelines. This has been due to the purchasing agent's access to and control of a large portion of a business' budget. The authority and ability to influence where funds from that budget go leaves the purchasing agent vulnerable to a temptation to misuse that influence.

In a 1987 study conducted jointly by Ernst and Whinney and the National Association of Purchasing Management (NAPM), it was found that,

> ...the vast majority of purchasing personnel conduct their business affairs in an ethical manner; however, they do not agree on how ethical standards can be enforced. Adoption of a formal ethics policy is considered helpful in preventing dubious practice.... (Forker & Janson, 1990, p. 19).

The study included respondents from corporations in thirty-nine states, plus the District of Columbia, and Canada, with 50 percent of the respondents holding the title of manager. When compared with a similar 1975 NAPM study, the 1987 study's results revealed strong downward trends in such questionable practices as disclosure of one vendor's prices to another prior to award of a purchase contract, and personal financial interest in vendors. However, while the frequency of accepting favors decreased during the 12 year interval, the number of favors accepted and their annual value increased. Additionally, an area which showed a significant increase from 1975 to 1987 was practice of different ethical standards when buying overseas (Forker & Janson, 1990).

Another issue raised by the 1987 study, which had not been addressed in the 1975 study, was the detrimental influence outside the purchasing department on the buying process. Forty-seven percent of the survey respondents indicated that material specifications were tailored to favor a specific vendor, thus limiting competition. In

addition, forty-three percent indicated that management had directed that a specific supplier be used (Forker & Janson, 1990). These findings demonstrate a need for continuing education, expanded to include those outside of the purchasing department, and emphasizing the impropriety of the receipt of favors.

G. ETHICAL DECISION MAKING IN GOVERNMENT

1. General

Five points of reference, as identified by Gortner in his study of mid-level public managers, provide a framework for ethical discussion of Government employees' decision making. Although Gortner did not limit his study to any specific Governmental function, such as acquisition, his results can be used for analysis of ethical decision making by DOD acquisition employees.

The law and its implementing rules and regulations acts as the primary basis for ethical decisions, with organizational dynamics providing a significant influence. Other influences, in decreasing order of importance include individual characteristics, the concept of a moral obligation to a professional code, and finally, philosophical or cultural values. This hierarchy of relevance documents the impact of the ethical environment on the decision-making of those who work in Government (Gortner, 1991).

2. Role of Law in Ethical Decision Making

Gortner's study indicated that the law can serve as both an obstacle and an aid to ethical decision making in public administration. In the first case,

> ...the law served as a delimiter- managers had to deal with ethical situations where the law was a limiting factor. They [public managers] wanted to accomplish a specific goal and stay within the rules and regulations. Often the current rules and regulations kept them from efficiently or effectively achieving the goal that seemed most desired (Gortner, 1991, p.53).

On the other hand, the law can also facilitate ethical decision making,

> ...the law served as protection and support when managers were pressured to do things that they felt were not appropriate....In some cases the managers were able to resolve the issue by clearly stating the rules and regulations related to a specific situation and refusing to carry out the

> desires of superiors or peers. In other cases the problem became one of clearly understanding the rules and regulations in order to know what was an appropriate compromise that remained in the letter and intent of the law (Gortner, 1991, p.54).

3. Role of Organizational Dynamics in Ethical Decision Making

Inherent in the environment of Government managers is the impact of political factors and an individual's position within the organization's hierarchy. One's location in the hierarchy determines the kinds of ethical dilemmas faced. Those at the highest levels of Government, such as elected or appointed officials, face issues generated by conflicts with political interests. In addition, those at the highest levels must deal with what Gortner calls "macroethics" or "policy" ethics in which decisions "involve large numbers of people, indeed, completed institutional systems," (Gortner, 1991, p.36). At the other end of the spectrum are "microethics" or individual ethics which represent the type of issues faced by those public managers "who operate from the middle or lower levels of public service and whose power seldom extends beyond their immediate environments."

This limited power narrows the scope and impact of mid-level public managers' decisions to their segment of an organization. Dilemmas may be complex, but are unlikely to either save or destroy an organization. Generally, the conflict faced by mid-level public managers is "one of personal integrity versus pressures to conform, to overlook, to keep quiet, or to perform wrongful acts (Gortner, 1991, p.37)."

4. Individual Characteristics as a Basis for Ethical Decisions

The next reference point for ethical decision making - individual characteristics - combines the factors of personal background, personality characteristics, and ethical maturity as defined by Lawrence Kohlberg's six stages of moral maturity. Gortner's research subjects easily recognized the first two factors as important influences on their decision making. Although the public managers did not speak about the last factor in terms of Kohlberg's formal theory, they did show a desire to make ethical decisions, in accord with universal ethical principles, not just because a law defined an action as wrong.

5. Role of Professional Codes

What Gortner found surprising in his study, was the infrequent use of professional codes as a point of reference for ethical decision making.

> ... the managers seldom mentioned the professions (for example, medicine, law, accounting, engineering, and psychology) and the codes of ethics related to those professions as having any influence on their actions. In a few cases *where the individuals acted in professional capacities* (for example, as lawyers or accountants), the codes of the relevant professions played a central role in their decisions and actions, but *when interviewees were acting as managers*, the professional mores and ethical codes became much less relevant (Gortner, 1991, p.43).

Gortner cites the formulation of a code of ethics for public managers as an urgent need that should be fulfilled:

> What public managers are looking for is an understanding of the *values* that are central to the idea of professionalism. To the extent that codes address these issues, those codes will have increasing relevance and value to public managers... (Gortner, 1991, p.59).

6. Role of Philosophical or Cultural Values

The respondents in Gortner's study did not specifically cite philosophical or cultural values (including those derived from religious tenets). This does not mean that these sorts of values did not influence the public managers' ethical decision making process. Rather, those values are so integral to their personal perspective that it was difficult to separate the values into specific reference points:

As one of the interviewees commented, most successful managers are aware of the impact of culture on actions, but,

> ...culture does not usually impinge on one's thinking. Instead it creates an environment, a milieu, in which alternatives are imagined and analyzed. We are aware of it only if we stop and think specifically of it Obviously, to the extent that general values, principles, and perceptions do apply, they must then be translated so they become relevant to the specific issues about which we are concerned (Gortner, 1991, pp.41-42).

H. SUMMARY

This chapter has provided an overview of ethics discussion in journal articles, reports, studies and research. This survey of the literature has focused on factors that contribute to the development and application of codes of ethics. As chronicled by Frederick, business values have expanded from purely economic concerns to include a recognition of social responsibility. Ethical principles defined by the commercial purchasing profession include market values such as profit, the preference for competition, and the authority of contracts. Additionally, social values such as charity, corporate responsibility toward the environment, and support of civil rights have been incorporated into business codes of ethics. While corporations do not hold the same statutory obligation to society that Government holds, much of the principles addressed by business ethics share similar objectives.

In general, the discussion of ethics in literature has centered on the formation of guidelines for ethical decision making rather than on the process of ethical decision making. One notable exception is Gortner's study of public managers. His identification of five influences on ethical decision making provides a useful framework for analysis of ethical dilemmas faced by Department of Defense acquisition employees.

IV. RESEARCH METHOD

A. GENERAL

This study was conducted using qualitative methods. A qualitative approach was chosen over a quantitative approach because this research is concerned more with describing the process of ethical decision making by acquisition employees than with providing a quantitative analysis of the decisions. Data collection focused on the perceptions, feelings, and attitudes of acquisition employees about ethical issues; these types of data are best studied by qualitative research techniques which look at "how people make sense of their lives, experiences, and their structures of the world." (Creswell, 1994, p.145)

B. LITERATURE REVIEW

The research began with a review of legislation and literature concerning ethics, particularly in the business field. Discussion in the literature identified parallel ethical issues for commercial purchasing entities and the Government acquisition workforce. For Government acquisition employees, legislation has concerned itself primarily with the buyer and supplier relationship and the perception of fairness. As discussed in Chapter II, these issues can be viewed in the context of the three principles which forms an implied code of ethics for Government employees: (1) the necessity of gaining and keeping public trust, (2) separation of private and public interests, and (3) the importance of avoiding even the appearance of wrongdoing.

The literature review also included examination of Gortner's study of public managers which classified five influences on ethical decision making by public managers: (1) the law, (2) organizational dynamics, (3) individual characteristics of the decision maker, (4) professional codes, and (5) philosophical or cultural values (Gortner, 1991).

Gortner's five influences along with the ethical issues identified as common to the purchasing or acquisition function provided a framework for examining the data collected in this research.

C. PURPOSE OF RESEARCH

The intent of this research was to discover how acquisition employees define and resolve ethical dilemmas. Through an open-ended inquiry, the researcher sought to answer the primary question of this research:

> What are common ethical dilemmas faced by DOD acquisition employees and how might these ethical dilemmas be resolved?

Specific ethical situations identified in the literature - such as the seven business ethical rules defined by Steidlmeir (1987), the issues addressed in the National Association of Purchasing Management (NAPM) Standards of Purchasing Practice (Sherman, 1991), and the primary areas of concern in business codes of conduct found by McKee (1992) - served only as points of reference for the research. Data collection was not limited to what has been already identified in ethical legislation and literature as ethical dilemmas common to the purchasing and acquisition functions.

D. BENEFITS OF THE RESEARCH

Identification and analysis of ethical dilemmas faced by DOD acquisition employees can be used to teach decision strategies for acquisition ethical issues. Furthermore, as conceived by Brady's "Formalist Methodological Cycle" (Brady, 1990) for ethical thinking, collection and examination of actual cases can uncover new ethical issues that are not addressed by current principles or law..

E. RESEARCH PARTICIPANTS

Twelve research participants were interviewed for this study. The research participants represented different levels of the DOD acquisition hierarchy. Their positions ranged from that of small purchase buyer to director of contracts for a major system command. Five of the interviewees held the senior position in their contracting offices. Contracting experience of the research extended from less than one year to over 20 years.

F. CONDUCT OF INTERVIEWS

Interview questions were worded so that respondents could report "observed" ethical situations, not necessarily ethical situations in which respondents played a primary role. By allowing the respondents to distance themselves from the ethical dilemmas and stressing confidentiality of the interviews, the researcher strived to encourage candid and thorough responses. On-site interviews were held with selected respondents to collect personal narratives. Due to the type of data being sought, face-to-face interviews were deemed the most appropriate means of obtaining the required information about ethical dilemmas. The researcher had to gain the trust of the interviewees in order to be able to encourage them to talk about their ethical experiences. This was best accomplished in person - where non-verbal cues alerted the researcher to adjust the pace and direction of an interview. With the consent of each respondent, interviews were tape-recorded for verbatim transcription to ensure the accuracy. Each interview lasted between sixty and ninety minutes. The interview format was as follows:

INTERVIEW QUESTIONS

Background: Acquisition and contract management requires many different kinds of decisions to be made. Making tradeoffs between low bid contractors and higher priced contractors with better performance records, working with funding and time constraints, and weighing the cost and benefit of underperforming contractors represent a few issues that acquisition employees face. By reviewing actual cases, a new acquisition employee can be better prepared to deal with such issue. Based on this and other interviews, case studies will be developed which will be used for teaching purposes. The anonymous case studies will illustrate real-life situations and decision processes

Definition of an ethical dilemma: A situation caused by a conflict of values, requiring a person to decide on one course of action over another course of action.

1. Based on this definition of an ethical dilemma, and your experience as a DOD acquisition employee, what particular ethical dilemma have you observed?

2. In your opinion, is the ethical dilemma one that is commonly faced by acquisition employees?

3. Describe the ethical dilemma:
   a. What events led up to the situation?
   b. In your opinion, what event was the most instrumental in creating the dilemma?
   c. What do you believe were the root causes of the dilemma?

4. How was the ethical dilemma resolved?

5. What acquisition regulations, directives, standards of conduct, etc., were referenced for guidance to resolve the ethical dilemma?

6. What do you think could have been done differently to resolve the dilemma?

7. In your opinion, what could the organization have done to better resolve the dilemma?

8. What would you recommend to other individuals who might find themselves in similar situations?

9. How adequately do you think current regulations, such as the Joint Ethics Regulation and the Procurement Integrity Act, provide guidance for dealing with ethical dilemmas?

10. Do you wish to add anything else that might help to improve ethical decision making in the acquisition workplace?

G. ANALYSIS OF DATA

Analysis of the narratives began with a search for common themes and patterns. As reported in Chapter V, Data Presentation and Analysis, it was found that the narratives could be fit into three general topic areas: the overall ethical environment of the DOD acquisition system, ethical dilemmas with customers, and ethical dilemmas with contractors. Analysis of the research respondents' decision making process was compared with the results from Gortner's study of Federal public managers and revealed that Gortner's five influences on decision making were relevant for acquisition employees.

H. SUMMARY

This chapter has described the research method used in conducting this study. A review of the literature identified common ethical issues for purchasing and acquisition

employees; these issues were used as a loose framework for collection of the data. The data collection was one of exploration of what acquisition employees define as ethical dilemmas and how they resolve the dilemmas. Chapter V presents the data collected from the interviews and gives an analysis of the data. Chapter VI, Acquisition Ethical Case Studies, presents a compilation of fourteen case narratives developed from the data along with instructional questions and notes.

V. DATA PRESENTATION AND ANALYSIS

A. GENERAL

This chapter presents and analyzes the data collected from the interviews conducted in the study. Interviews are referenced by numbered narratives; presentation of the data is arranged by grouping excerpts from the narratives into three general topic areas which emerged from the interviews: the ethical environment of the DOD acquisition system, ethical dilemmas with customers, and ethical dilemmas with contractors. Finally, the data is analyzed using ethical theory and Gortner's five influences on ethical decision making as examined in Chapter III, Literature Review.

B. ETHICAL ENVIRONMENT

The current ethical environment of the DOD acquisition system, in terms of what is defined as ethical or unethical, was depicted by research participants as much more stringent than in the past. Increased legislation and more detailed definitions of unethical practices substantiate their perception. When speaking about the ethical environment of the DOD acquisition system, research participants characterized it as being less forgiving of "gray areas" than in past years:

> **Congress has taken it out of a business decision, and made it a felony. I'm really comfortable with dealing with rules that aren't felonies. You tell me, 'If you blow it,' if I stick my hand out and I get it slapped I won't do that one again. But if you stick your hand out and they cut it.... I think when you get into the ethics stuff, you stick your hand out, you will get your hand cut off. It's too hard. They have made it so hard, so complex, that it's not always true that common sense prevails. And I approach this job from a common sense perspective** (Narrative #8).

According to the same respondent, individuals' ethical values did not change, the rules did:

> **I would personally argue that the people that sat in this job in the 60s, 70s, 80s, were as ethical about during their job as I am, or as I hope I am. But the laws they operated under were different, and what was accepted behavior was different. The environment changes,**

...when I was a LTJG, I used to go to California once a month to Hughes. I can assure you that from an accounting perspective, they were doing things that are totally unacceptable today - they were all driving Mercedes [cars] that were being billed back to the company. In the 70s, my perdiem didn't cover expenses, but Hughes always took you to lunches - probably cost $30 or $40 dollars - in 1970 dollars - they were unbelievable lunches... back then it was sort of O.K. Today I wouldn't touch it with a ten foot pole. Did it alter my judgment back then? I don't think so (Narrative #8).

Speaking in the same vein, another interviewee felt that the focus of current standards of conduct is misplaced, and tends to create distrust between the Government and contractors:

I think we're pretty well indoctrinated, I mean if somebody is going to be dishonest, they're going to be dishonest regardless. They're not going to worry about whether they are sitting down having lunch with a contractor. We're almost focused on the wrong things sometimes.... I understand that you can't be seen parading around at McDonnell Douglas in their corporate jet, being wined and dined; I'm not going to do that. Now, we have to send calendars back (Narrative #9).

A contracting officer cited the change in the local practice of accepting contractors' Christmas fruit baskets, as an example of regulatory overreaction to senior officials' misdeeds:

They send out fruit to negotiators during the Christmas holidays. We've been told we can't accept it. We used to be able to give it to a nonprofit organization. That is one of the things that is so frustrating - all of these regulations because of something which had happened in Washington. And because of that, they've imposed these restrictions to those in the field (Narrative # 3).

Interviewees questioned the need for the increased restrictions implemented by ethics legislation. The following two interviewees found the administrative requirements under the Procurement Integrity Act to be little more than inconvenient paperwork:

I look at the current ethics legislation, that grew out of Ill-Wind. The legislation that was there was just fine....Everyone that was prosecuted out of Ill-Wind was prosecuted under the old

> **legislation. Now what I've got from the new ethics legislation is a whole lot more paperwork, training,...**(Narrative #8).

The second interviewee viewed non-disclosure forms, which require certification by buyers and suppliers that proprietary or source selection information will not be disclosed, as useless:

> **We have the contractor and the customer sign off on the non-disclosure forms (in accordance with the Procurement Act)....I think they're just paper. I don't see how that would really deter anyone. It's so hard to have the resources to investigate to turn that stuff up. And it's so uncommon. I would say that the majority, about 95% of procurements, happen without any problems** (Narrative #11).

Another contracting officer welcomed the changes resulting from the JER and the Procurement Integrity Act:

> **The old standards of conduct were basically a farce...It [JER] started defining what you were allowed to do. You used to not be permitted to give a gift to a senior. Now you can for special occasions. It kind of eased restrictions , it's more specific, and it applies to everyone.... It used to be the Army had one [Standard of Conduct], the Air Force had one, the Navy had another... I think that people are more aware, I think that people are more ethical now. The contractors don't come to you as much as they used to do. Ethics is much more on the front burner, Ill Wind was the genesis of all of that....JER was a smart thing** (Narrative #10).

C. ETHICAL DILEMMAS WITH CUSTOMERS

The most often cited source of ethical dilemmas for interviewees was the conflict between wanting to serve their customers and wanting to comply with acquisition laws and the Federal Acquisition Regulation (FAR). As the originators of contract requirements, customers would exert pressure on contracting officers to take shortcuts around regulations, steer contracts to specific suppliers, or to treat routine needs as urgent requirements. Additionally, there were situations that raised questions of inappropriate contact between a contractor and a customer. In the sample of collected narratives, how a

contracting officer resolved such issues depended on the amount of time available to make a decision, the urgency of the customer's requirement, the amount of authority or influence a customer had over the contracting office, and the dollar value of the contract.

1. Time Constraints

Ethical dilemmas aggravated by time constraints prevent a contracting officer from processing a contract in a way which is comfortable for him or her. If sufficient time were available, the contracting officer could try to convince the customer that the normal process could fulfill the customer's needs, or search for an alternate solution that satisfied both the customer and the contracting officer's sense of propriety.

In one case example, because time was not available, one contracting officer made the decision to do what he felt was wrong. The dilemma arose when a Naval Base decided to hold a fair to promote carpooling in order to meet the requirements of the Local Air Quality Management District. The Security Department held responsibility for organizing the fair, which was scheduled to occur within a few weeks, and ensuring that as many people as possible attended. With that goal in mind, the Security Department drafted the purchase request for promotional items with carpooling slogans, such as balloons, pens, and coolers. Included in the purchase request were clock radios, and cassette players for door prizes (Narrative #2).

The relatively low value of the contract - $500 - made the decision easier to make. Yet, the contracting officer was still not comfortable with his decision because he did not have the assurance that his decision was in compliance with the FAR:

> **The bad part is, I spent taxpayer money for door prizes, for clock radios, cassette players, stuff like that. I'm about 95% certain you can't do that. If you have to rationalize, you need that stuff to get people to attend, so you can show the district you had the requisite people at the fair or else, it didn't count and you had to do it over again....Time being of essence,...the requiring activity didn't get to me in time, and so, we didn't research the issue to death.** (Narrative #2)

2. Urgency of customer need

Acquisition regulations allow for exceptions to normal procedures particularly for "urgent and compelling" requirements. Determination of "urgent and compelling" must be supported by sufficient justification, however, the contracting officer still has significant discretion in judging whether a customer's requirement is truly urgent.

In the examples described in the collected narratives, if the validity of a customer's claim of urgency seemed questionable, a contracting officer would not hesitate to refuse to deviate from normal procedures:

> **There are times when you receive a requirement, and the customer wants it done on an urgency basis and the urgency is valid, not because of poor planning. [But] you can end up in situations where you suspect it's because of poor planning, but it's still urgent, especially for a ship getting ready to deploy. However, if it's urgent, it can still be ethically questionable - for example, the customer has known about it for two years: 'It's urgent, we're going to be inspected in two months...' I've been known to say no. Because, they've known they needed the equipment to meet the environmental compliance. And they're going to be fined by an environmental agency. 'Because we didn't have the money.' That's not a justification for urgency, 'But you knew you needed the money, you should have made plans to get the money. And now you're saying it's going to cost the Government $100 thousand dollars a day.'** (Narrative #3)

Another interviewee recounted an instance when a customer wanted to separate a large purchase for ten telephone closets (for wiring) into several small purchase requests:

> **The engineers [from the customer activity] wanted us to do them as small purchase requirement because it's quicker. For large purchase you have to synopsize [for small purchases], they do not have to write a specification, they can just write one line description. We just told them no. It went in as a large purchase. If we had done it as they wanted, it would have taken about just a week, or just a couple of days; the contractor could have come in and begun working right away. It wasn't urgent enough to stretch the rules. That's one rule we don't stretch . . . and they know it, but I can understand where they're coming from: the government has a need,**

and they want to get it fulfilled as soon as possible. Unfortunately, that makes us, me, the bad guy. But these are laws we're talking about, not just some local regulations (Narrative #1).

For a customer who did have a valid emergency, one contracting officer had to accept a price for communication devices which included what he felt was "an exorbitant amount of profit." But because the customer - a combat unit deployed overseas - needed the communication devices immediately, the contracting officer awarded the contract at the proposed price:

The contractor knew that the price was inflated. If we'd had more time, we could have negotiated the price down and at least have the tactic of saying, 'No, we're not going to purchase the communication devices.' But the contractor knew we needed them, and that we had no choice. It was a time of crisis and their position was, 'take it or leave it.' (Narrative #7)

Daily calls from a senior officer compounded the situation for the contracting officer:

But it's stuff like that when you have a Captain calling you, pressuring to sign the contract, sign the contract, we need this delivered tomorrow. And you're looking at a proposal that says X dollars for profit. And in that situation, you're hoping it never gets out (Narrative #7).

3. Improper influence of contractor over the customer

Contracting officers in the study faced situations where they suspected that a customer had been unduly influenced by a contractor. The contractor's interaction with a customer generated concerns of potential favoritism and the appearance of a conflict of interest. One example presented a harmless situation easily resolved by the contracting officer:

A contractor will come in to the customer and demonstrate a piece of equipment. And when the requirement comes in, we can tell whether they're using someone else's description....When I was a negotiator, I would get on the phone, I'd call the customer and ask, 'Who's the manufacturer? What's the part number? - You didn't specify brand name or equivalent, you have to give me a generic description of what you want. And if you have to have this particular brand, you have to justify it.' Sometimes they will try to push the

> **issue, a lot of the times, the customer will get irate. We might not get you the exact product you want; our responsibility is to get you what your minimum requirements and your needs are, and this is how we can help you.** (Narrative #3)

Compounding the dilemma described above was the conflict in the definition of "minimum requirements." The customer felt that his preferred brand or manufacturer could best satisfy his "minimum requirements." To the contracting officer, the customer's preference was secondary to obtaining competition for the contract. By having the customer rewrite the purchase request in generic terms, the contracting officer was able to comply with the FAR and award the contract competitively.

Another contracting officer observed a more troubling situation:

> **I see the engineering people as a problem. They frequently have contractors in their area, talking about upcoming construction projects. What the engineers say is that they're doing market research, but it doesn't look right when you have contractors with the engineers all the time and the engineers are writing the requirements. I know that part of the Procurement Integrity Act is that you're not supposed to give advance procurement information . I don't know if they're actually doing anything wrong.** (Narrative #1)

Here the line was blurred between contractors participating in market research and being excessively involved in the customer's defining of construction requirements. The contracting officer did not have a clear means to resolve what he saw as a problem.

D. ETHICAL DILEMMAS WITH CONTRACTORS

The second most cited source of ethical dilemmas for interviewees centered on their business relationship with contractors. The business relationship between the Government and contractors is more complex than buyer and supplier relationships in private industry. As a customer, the Government's "size, diverse markets and social policy objective," make its role as a buyer one that goes beyond that of obtaining goods and services (Sherman, 1991, p.35). The policy objectives often dominate the procurement process to the extent that they are "frequently conflicting and peripheral to the acquisition of services or materials." (Sherman, 1991, p.38)

In the interviews conducted in this research, dilemmas resulted from a conflict between a desire to foster an amiable business relationship with the Defense industry and wanting to protect taxpayers' interest, as defined by the acquisition system's policy objectives. More often than not the interviewees described the relationship between Government and Defense contractors as adversarial.

1. Pricing Issues

One explanation offered by an interviewee characterized the antagonism between the Government and contractors as an inevitable outcome of the acquisition community's emphasis on obtaining the lowest price possible. This emphasis has even led to investigative efforts that cost more than the amount of a suspected price discrepancy:

> **We're seeing an adversarial relationship which has evolved between the Government and contractors.....You're not doing your job unless you have the contractor on his knees...you want to get the lowest price possible.....I've seen this attitude in negotiating....There has to be a balance between representing the taxpayer and doing what's most ethical for the procurement process....I know some folks in private industry, in the defense industry, I trust them implicitly because I've negotiated with them, I think they're honest, hardworking and I believe them when they tell me things, but there's a sense of mistrust by and large across the board that fuels into this thing about get the lowest price possible....We've got every kind of organization that's trying to investigate fraud, and everything else, ...people have spent weeks on $800 pricing problems....** (Narrative # 9).

Another interviewee described how he tried to obtain pricing information from an offeror:

> **I've got one guy calling me, and he won't give me any pricing information. I tell him, 'If you don't, I can't make the contract, or I'll have to propose it at an unreasonable price,' meaning I can't justify the price. 'I'm going to have to send the boys in, the DCAA [Defense Contract Auditing Agency] auditors. Fine, if you want to start a paperwork war, I swear they'll audit you and you'll wish you'd never seen them. Why don't you help me upfront here?' He says, ' No, I'm not giving you anything,' that's his right, it's under $500 thousand. I really don't request an audit, because I don't have any rates to look at** (Narrative #6).

His threat to have the DCAA audit the offeror corroborates the previous narrator's assertion that pricing issues are a reason for the adversarial relationship between the Government and contractors.

Yet, the blame does not always lay on the Government side. In the case of the emergency communication devices, the contracting officer's experience with the sole source supplier left him disillusioned:

> **It was a time of crisis and their position was, 'take it or leave it.' They gouged the Government. They didn't provide any cost or pricing information. And we asked them to provide that to us, and that was the point as we saw it, 'This is kind of outrageous. Can you justify this?' And we had only one source for this communication devices. It was a true emergency. The stuff was shipped out the next day. And we told them that we weren't going to sign without any justification; it was unpleasant because we had no negotiating position whatsoever. I've try to stay away from that contractor.** (Narrative #7)

2. Progress Payments

Progress payments are a common way for the Government to assist contractors in financing their contracts. A contractor does not receive the payments automatically, however. The contractor has to show that the costs were properly incurred in the performance of the Government's contract (Arnavas and Ruberry, 1994). Ultimately, the Administrative Contracting Officer (ACO) makes the final decision on whether to approve a request for progress payment. The following narrator had an acute awareness of the impact of his decisions regarding progress payments:

> **So, you're in a dilemma- do I shut down his progress payment and cause him to probably miss his payroll? Or do I follow the letter of the law and the policies guiding progress payments and not allow the payment to go out? That's when you have to take a position of deciding on following the guidelines or keeping the guy going... It's the most difficult decision, I think that an ACO makes of deciding whether to allow a payment to go out when they say don't make the payment. Because the decision rests with the ACO. And there have been times, because of the company and their past history that we**

> **have allowed a payment to go through and DCAA has said, 'You don't want to make this payment.' And you do it. It causes quite a dilemma and the dilemma is between what you're being told and what your gut feel is**. (Narrative #10)

The narrator described two incidents where he felt that his decision on whether to approve a company's request for payment affected their ability to survive. The first case involved a computer company's progress payment request for $250 thousand:

> **One particular company sent in a progress payment request that I denied based on DCAA's knowledge of what was going on. I got all kind of calls from the company's president, saying, 'Look, this is a lot of money for us, and we need the money to make payroll.' It was about 250 thousand dollars...'I've got to make bills....,' I said, 'I've got a thick report from DCAA saying that information you put on your progress payment report isn't valid. I have no idea what to pay you - you've got to get this straight. Until you do, I can't make this payment in all good conscience.' I didn't make the payment. Well, they very quickly straightened out the problem. And it turned out to be more of a paperwork problem , I signed the progress payment - I even expedited the payment after I signed it. Short term, it squeezed them a little bit. Long term, they completed the contract and they did a good job.** (Narrative #10)

In this first case, the contracting officer's decision to reject the payment request in accordance with the adverse report from DCAA resulted in only a short term inconvenience for the company. However, in the second case, where the same contracting officer approved a progress payment contrary to DCAA's recommendation, his gamble did not pay off:

> **The other case was an SDB [small, disadvantaged business], it was three gentlemen who made trainers for the Navy. It was SDB and we wanted to see them do well, - a progress payment came in, and these people were living by a string, they were just getting along. I made a payment based on that. DCAA said, 'Don't make the payment.' I made the decision to make the payment. The company eventually folded. They folded six months later - it was 50 thousand dollars. I knew that if I cut them off then, they were going to fold**

right then, but if I could get them past the rough spots, they might hang on, get the contract underway and get the contract done. (Narrative #10).

3. Gratuities

A subject that frequently came up in interviews concerned gratuities from contractors. This is not surprising given the emphasis on gratuities in ethical legislation and ethical training for acquisition employees. In general, the gratuities described took the form of meals, food gifts, or company mementos such as pens or ballcaps. Very rarely did an interviewee mentioned any offer of a "blatantly inappropriate" gratuity. A consensus among the research interviewees was that although Defense contractors "knew better" - presumably from the public and statutory attention given to gratuities - they would still make questionable offers of gratuities. As one interviewee recounted his experience with contractors:

> **Contractors will approach you in subtle kinds of ways, you have to say 'no,' not just once, but twice, and continue to say 'no.' I had a case, I was negotiating with this contractor, and I dealt with them many times before and I was getting to make my award - and he said, 'If we get this award, I'm going to give you a really good gift.' I told him, 'That would be nice, but I can't accept anything.' He got the contract, but because he was the low offeror and technical superior bidder. And it can be easily done with job offers. It [offers of gratuities] could be easier with small purchase, because of repetitiveness, and the number of actions.** (Narrative #3)

The question of whether to accept gratuities was not always straightforward due to the confusion of what the Joint Ethics Regulation (JER) and the Federal Acquisition Regulation (FAR) allow as an exception to the general prohibition against receiving gratuities. As stated in the FAR:

> An employee may accept unsolicited gifts having an aggregate market value of $20 or less per occasion, provided that the aggregate market value of individual gifts received from any one person under the authority of this paragraph shall not exceed $50 in a calendar year (JER, Sec. 2635-204).

However, under the provisions of the Procurement Integrity Act, procurement officials for a specific contract are prohibited prior to award from accepting any gift from a competing contractor for that specific contract (FAR, Part 3.101-2). Furthermore, the FAR defines "gratuity or other thing of value" as:

> ...any gift, favor, entertainment, or other item having monetary value. The phrase includes services, conference fees, vendor promotional training, transportation, lodgings and meals....The phrase does not include-...Any unsolicited item, other than money, having a market value of $10 or less per event or presentation (FAR, Part 3.104-4).

For one contracting officer, the confusion arose not only because of the different dollar values - $20 under the JER and $10 under the FAR- given as allowable for acceptance of gifts from contractors, but also due to the need to determine "market value":

> **A contractor can order flowers, candy, in bulk. A box of candy can cost a contractor only five dollars or ten dollars, whereas, if you bought the box yourself, it would cost twenty-five dollars. So why can't I accept that? Are they looking at the cost to the contractor, or to the public?** (Narrative #3)

Another contracting officer faced a dilemma while visiting England where the prevailing standards of conduct between suppliers and buyers differed from those "back home." The dilemma arose when other U.S. Government employees in the travel party accepted what he felt were inappropriate gratuities:

> **I found myself in a program review once, in England, and I didn't know where were staying, and the next thing I knew, I found myself in a hotel that's run by Rolls Royce, catered by Rolls Royce, everything provided by Rolls Royce. I had to extract myself from the situation....I had to demand to pay for the room. It was a touchy situation You always find that situation where contractors want to treat you as they would a commercial customer. I spent a lot of time overseas in England, I think it's much more prevalent than it is here. The American Defense contractors pretty much understand the rules....in England, they knew what the rules were , but they wanted to conduct business the way they were used to with other customers, other governments. But I had a different code of ethics, standards that I had to follow.** (Narrative # 9)

4. Conflicts of Interest

As a core value for Government employees, avoidance of conflicts of interest was understood by interviewees to be essential. They did not question the need to separate public and private interests, however, they were uncomfortable with the idea of having to avoid even the appearance of a conflict of interest. One narrator recounted an incident that seemed obvious to him in hindsight, but was ambiguous when it occurred five years ago:

> **While we were talking to X Crane, they offered to pay us to find used cranes. What he does, - cranes are expensive, but there's a lot of cranes you can see when you are driving down the road. He would offer us a finder's fee - he would offer anyone a finder's fee to find cranes he could purchase - and he would give you a certain percentage of the purchase price as a finder's fee. It sounded like a great idea, because I'd see cranes along the road people would have up for sale. I was in a dilemma, because I didn't know if I was allowed to do that. Was it like him offering me a job? - and here I'm dealing with the guy, was there anything wrong with it?** (Narrative #10)

The narrator, after thinking about the contractor's offer, went to the legal officer for advice:

> **... the general counsel said that was absolutely the wrong thing - we could not have any kind of ties to that company if we were dealing with it on a contract....It would appear that I was acting as an agent for the company, hooking them up with crane sellers and that I would be wrong to do it. I'm glad I talked to the counsel, because not long after that, I ran across a crane and knowing that I could have gotten a finder's fee - I could have called him. He was talking about several thousand dollars for each crane that you found. It was a dilemma in ethics because I had to decide whether it was wrong and go ask the general counsel about it.** (Narrative#10)

One approach for dealing with the appearance of a conflict of interest was to limit contact with any contractors:

> **I'm at the point where I'll go the gym and meet some retired military guys, and they own a restaurant, and they'll say, 'Come on,'**

- have a get together or something - and I just try to avoid those kinds of situations - because I don't want to give the appearance of even doing anything wrong. (Narrative #9)

Another contracting officer dealt with the issue of conflict of interest by consulting with local legal counselors before he met with anyone in private industry:

> **Because the ethics laws are so stringent, and I don't understand them nearly as well as I should, I've gotten into the habit of picking up the phone and calling the lawyers. I have a friend, who retired from the Navy three years ago . . . I've known twenty-three years, who used to be a DPRO commander - now in private industry. I call counsel before I go out to dinner - he's in town selling to the Government. He's not selling to [Narrator's command] or to me... I want to make sure that when I'm seen in his company, and someone calls the hotline, I won't be shot at dawn every time I have a contact with someone in private industry. I have a friend, who is now a beltway bandit... we were ensigns together. Every single time we go out to lunch... I call counsel. I don't want to get caught short. Is it necessary? No. But do I do it? Yes. It takes me about 2 minutes. They ask back the right questions. Am I paranoid in that arena? I'd like to think not, but am I very, very careful? Yes.** (Narrative #8)

5. 8(a) Small Business Preferences

Section 8(a) under the Small Business Act allows for preferential procurement treatment for "small and disadvantaged businesses" (SDBs), which by statutory definition are minority-owned businesses. Two interviewees in this study shared anecdotes where the program had been misused. In the following situation, the contracting officer felt powerless to correct unfair concessions made for an SDB firm. His powerlessness resulted primarily from the customer's hierarchial position and authority over the contracting activity. The customer dictated the outcome of the source selection process over which the contracting officer would normally have control. Because the firm qualified for preferential treatment under the 8(a) program, the customer's ability to direct

that his requirement be fulfilled by a particular firm was easier than if the firm had not qualified as an SDB:

> **I had another instance with an 8(a) contractor for a requirement for someone in the Pentagon that was very influential, let's say. They needed some support for their computers and they handpicked this 8(a) contractor. We got reports back from DCAA saying that the contractor's accounting system was inadequate, and they found stuff that wasn't allocable to the business, such as church donations, parking tickets, and my contracting officer refused to sign the contract. The customer came to my director of contracts and said, 'We need something in place, we need this contractor on board.' It was an executive decision by two levels above me, that the contract would be signed by the following Tuesday** (Narrative #11).

As a means of forcing the contractor to correct the accounting deficiencies, the contracting officer stipulated in the contract that DCAA would conduct a post-award audit:

> **We put a clause in the contract that the contractor would correct the deficiencies in the accounting system, and we would do a post-award audit. We did a post-award audit, the contractor failed in the accounting system. After the second audit, DCAA submitted some recommendations; the contractor had them corrected by the third audit. Finally, the contractor had an adequate contracting system. It took them about a year. There were a lot of supplies and services bought from that contractor during that year, and I'm not so sure that the rates they provided were all that accurate.**
> (Narrative #11)

Another interviewee expressed ambivalence about the 8(a) program. While his experiences with 8(a) firms had been good for the most part, he thought that the length of time that a firm can remain in the 8(a) program was too long:

> **A very large percentage of our large purchases are construction - most of which go to an 8(a) company. For here, 8(a) works really well - we have great number of good 8(a) construction companies. They do good work, probably as good as any of the other companies. I don't know if they would all survive without the program But I've seen the other side, I think they're in it too long, 9 years - I think 5 years at the most would be better....They're using the**

> **system Like [XYZ] - the owner is Filipino, he's getting ready to graduate out of the program - his brother will take over the company and then they will get back into the 8(a) program.** (Narrative #1)

In both of the interviews, the narrators recognized the purpose of the 8(a) program but had concerns about its affect on Government procurement. Their concern reflects current public debate on the validity of such minority-focused programs which has amplified doubts of their necessity and fairness.

E. ANALYSIS OF DATA

As discussed in Chapter III, Literature Review, Harold F. Gortner's study of 42 Federal public managers identified five points of reference that influence ethical decision making (Gortner, 1991). In decreasing order of importance, Gortner defined the points of reference as (1) the law and implementing rules and regulations, (2) organizational dynamics, (3) individual characteristics, (4) professions and codes of ethics related to those professions, and (5) philosophical or cultural values. Based on the prominence of the five influences in the research respondents' descriptions of ethical dilemmas, data in this study show a different order of significance for the five points of reference. In decreasing order of importance, the ranking of the points of reference is: (1) the law and implementing rules and regulations, (2) professional ethics, (3) organizational dynamics, (4) individual characteristics, and (5) philosophical or cultural values.

1. The Law and Implementing Rules and Regulations

The domination of law as an influence on ethical decision making emerged from the respondents' inclination toward a formalist approach in solving ethical dilemmas. They depended on rules, as set by the law or regulations, to define ethical actions. As with the public managers of Gortner's study, who

> regularly mentioned the law - usually referring to specific statutes, rules, or regulations - as they described the ethical situations they faced and the actions they took (Gortner, 1991, p. 52),

the acquisition employees interviewed made frequent references to the Federal Acquisition Regulation (FAR) and the Procurement Integrity Act (PIA). The FAR and the PIA acted

as the primary guidance for resolution of ethical issues. This reliance on rule was strikingly demonstrated by one contracting officer's distress over his inability to obtain cost and pricing information (as required by the FAR) for communication devices needed by a combat unit deployed overseas:

> **They didn't provide any cost or pricing information. And we asked them to provide that to us, and that was the as point we saw it, "This is kind of outrageous. Can you justify this?" And we had only one source for this communication devices. It was a true emergency. The stuff was shipped out the next day. And we told them that we weren't going to sign without any justification; it was unpleasant because we had no negotiating position whatsoever. I've try to stay away from that contractor.** (Narrative #7)

Even though the contracting officer recognized the need for the communication devices as "a true emergency," he defined the ethical dilemma solely in terms of his ability to comply with the FAR. He seemed unable to perceive the decision to award the contract as ethical from either a utilitarian perspective - the benefits of obtaining the communication devices immediately versus their cost, or from a humanitarian perspective - the increased safety of the combat troops provided by the communication devices.

Just as important as the FAR and the PIA, legal counselors played a prominent role in interviewees' ethical decision making. They not only served as consultants for clarifying what the interviewees' felt were ambiguous guidelines, but they also reaffirmed obvious (to the interviewee) decisions. Several of the interviewees routinely consulted with a legal counselor on all decisions concerning potential conflict of interest issues. This was not because the interviewees did not know the correct action to take, but as an extra safeguard against what the interviewees perceived as the harsh consequences of violating ethics regulations.

Present in the interviews was a sense of the legal counselor as the "ethics expert" in the organization. In nearly all of the activities represented in this study, the Designated Agency Ethics Official (DAEO) was the legal counsel. The JER codifies this role for counselors, by assigning the responsibility of DAEO to the General Counselor of each

DOD Component (JER, Sec. 1-405). Furthermore the JER directs the General Counsel for DOD to maintain the Standards of Conduct Office and oversee and coordinate DOD Component ethics programs. (JER, Sec. 1-407). This blending of legal and ethical advisor roles made it difficult for interviewees to separate legal and ethical issues.

2. Professional Ethics

The most significant difference in the ranking of the five points of reference from the ranking in Gortner's study of Federal public managers is the increased importance of professional ethics. Gortner found the relatively weak influence of professional codes on ethical decision making to be a surprising result of his study (Gortner, 1991, p.43). Where Gortner ranked its impact on decision making as fourth, this study shows it to have a greater relevance. Although there is not an explicit "Code of Ethics for Government Acquisition Employees," per se, the interviewees in this study expressed an awareness of what Government acquisition employees specifically should or should not do. This awareness extended beyond merely following legal mandates. The interviewees seemed to have an understanding of the ethical principles that underlie regulations. For example, in the anecdote of the contracting officer who visited England for a program review with Rolls Royce, the contracting officer's decision not to participate in many of the company-sponsored activities came out of his "orientation as a contracting professional" (Narrative #9), despite his non-contracting position on the program review team.

The awareness of what is ethical for Government contracting employees stems from the incorporation of ethical principles into the FAR and the PIA, which correspond to the business positions identified by Steidlmeir (1987) and the National Association of Purchasing Management (NAPM) Standards of Purchasing practices. Specific ethical principles most often referred to by research participants were the impropriety of accepting of gratuities and the avoidance of conflict of interests. Another ethical principle, to "promote positive supplier relationships through courtesy and impartiality in all phrases

of the purchasing cycle," (Sherman, 1991, p. 366) was the source discomfort for interviewees who viewed the Government-contractor relationship as adversarial.

3. Organizational Dynamics

In this study, organizational dynamics became a factor in decision making as a result of an influential customer's ability to direct a contracting officer's decision. For example, in the case of the emergency requirement for communication devices, the pressure from a senior officer forced the contracting officer to accept a higher price from the contractor than he felt was appropriate (Narrative #7). In another instance, "someone in the Pentagon who was very influential," handpicked the contractor and obtained exceptional concessions for the contractor (Narrative #11).

Another aspect of organizational dynamics which affected decisions was the perception of support from within a contracting activity. If a contracting officer felt confident that a decision would be supported, then a dilemma was more easily resolved:

> **I've been placed in this situation (pulled rank on) a couple of times. I must say, at this office and at my prior command, my command supported [me]. I've never had anyone say, 'You have to do it that way anyway.'** (Narrative #3)

Where there was no command support, the contracting officer had no recourse but to meet the demands of an influential customer:

> **The situation would have been easier if we had gone with another 8(a) contractor. I think it could have been handled better, I think that our top level management should have sided with the contracting officer's decision of not awarding the contract until the accounting system was completely fixed, because once the contract was in place, there was no incentive for the contractor to make improvement. But this was an extremely important customer....**(Narrative #11)

5. Individual Characteristics

Individual characteristics, as a factor for affecting ethical decision making was not as significant as was observed in Gortner's study. This is due in part to the prominence of the law as an influence on decision making. The pervasiveness of acquisition regulations

that govern every aspect of the acquisition process dilutes the effect of individual characteristics.

A discernible individual characteristic which did influence interviewees in their ethical decision making was the amount of experience an individual possessed. In general, the more years of experience an interviewee had in the acquisition system, the more likely they were to question the law and implementing regulations. Those interviewees spoke about ethical decisions from a broader perspective, rather than in terms of specific provisions addressed by the regulations.

There were incidences where interviewees made references to the idea of fairness, based on their own personal values. For example, one interviewee strived to impart fairness in his decisions on progress payment requests by incorporating his "gut feel" in his decision making. His idea of fairness placed humanitarian values over the formalist view represented by DCAA auditors:

> **But you have leeway, sometimes you've got to go against DCAA because DCAA is very black and white. They have no gray areas. If something's wrong, they report it and then they're done with it. They kind of wash their hands of it and say, 'ACO, I say no; do what you're going to do.' Use your best gut feel, because sometimes your gut feel is sometimes a lot smarter than looking at the black and white of things....And you've got to remember that every decision you make is a decision that affects human beings. But you can't be generous, you can't be to the point where you're just going to say yes all of the time....**(Narrative #10)

In other examples, fairness was defined in utilitarian terms of marketplace values, such as the preference for competition. An interviewee who spoke about an example of a misuse of the 8(a) program cited fairness as a primary concern. He had observed what he saw as unfair results of preferential treatment given to SDB firms:

> **We once had 46 large construction contracts - 44 of them went 8(a). I thought that was a little bit disproportionate. When I went to our SBA office and told the SBA guy, 'It's not fair to the commercial market,' He said that 'Fair is not in my vocabulary.'** (Narrative #1)

Another interviewee spoke about the acquisition system's emphasis on getting the lowest price possible from contractors, and questioned the fairness of forcing a contractor to renegotiate the contract option price:

> **When we've set up the contract and negotiated the base plus the option years, we've put a great deal of effort into structuring the thing, where we've said this is the right price for the system we're buying. And the contractor has put in a lot...when they've established that price and those option years' prices, they're thinking about their facilities investments, they're thinking about their labor pool, they know they don't have a guarantee they're going to get those options exercised, but they've got to make some economic decisions....Now we come along and say, 'That price isn't low enough for us.' There's nothing illegal about what we're doing, but is that unethical? Is that really an ethical way to do business? Or are we just fueling the fires of this adversarial relationship with the contractor?** (Narrative #9)

Also apparent in the above narrative is the interviewee's acknowledgement of a social responsibility to the Defense Industry, which employs a large portion of the nation's workforce.

5. Philosophical or Cultural Values

As with Gortner's study, the participants in this research did not specifically cite philosophical or societal cultural values as influencing their decisions on ethical issues. Rather, the cultural values which influenced decisions were less universal, but integral to the culture of the Government and its acquisition system. These values such as the implied Government code of ethics - sacredness of public trust, separation of private and public interests, and the importance of avoiding the appearance of wrongdoing - and cultural values of the acquisition system, such as the preference for competition and the emphasis on "lowest price," shaped most of the decision making.

F. SUMMARY

This chapter has presented the data collected in interviews conducted with 12 research participants. Analysis of the data has revealed three general areas that generated ethical dilemmas for interviewees: the ethical environment, contracting officers'

relationships with customers, and their relationships with contractors. The research respondents tended to define ethical dilemmas from a formalist point of view and relied on rules given by the law and regulations to help them resolve the dilemmas. Interviewees described the ethical environment as restrictive, and questioned the need for detailed restrictions and administrative requirements mandated by the JER and the Procurement Integrity Act.

In discussions concerning their relationships with customers, research participants spoke about conflicts between customers' demands and statutory requirements. Specific factors which determined how an interviewee dealt with such issues were the availability of time, the urgency of the customer's requirement, the amount of "clout" a customer possessed over the contracting activity and the dollar value of the affected contract.

Relationships with contractors represented another source of ethical dilemmas for interviewees. Pricing issues and gratuities were the subject of many of the narratives and raised questions about the validity of related regulations. Interviewees expressed ambivalence about regulations that foster an adversarial relationship between the Government and contractors.

Comparison of the analysis with the results of Gortner's study of public managers confirms his finding that the law and its implementing regulations are the most relevant factor for ethical decision making by Government employees. For the acquisition employees interviewed for this study, the law played an even bigger role than for the public managers in Gortner's study. A significant difference of this study from Gortner's, is the prominence of the sense of a professional code of ethics.

Chapter VI, Ethical Case Studies, presents eleven case studies based on narratives collected in the interviews of this study. Instructional notes and questions have been developed for each of the case studies, using the analysis developed in this chapter, and ethical theory and issues discussed in Chapter III, Literature Review.

VI. ETHICAL CASE SCENARIOS

A. INTRODUCTION

This chapter presents a format for discussion of ethical issues found in eleven case narratives compiled from interviews conducted in this study. A training module consisting of Chapter VI, Ethical Case Scenarios, Chapter II, Background, and Chapter III, Literature Review, can be used to supplement ethical training to members of the acquisition workforce. For a reproducible copy of the training module, contact Professor Susan P. Hocevar, Code SM/Hc, Department of Systems Management, Naval Postgraduate School, Monterey, California, 93943-5000.

Section B furnishes general teaching notes for group discussion of the cases. Discussion questions comprise two groups of questions. The first group forms a standard listing of case objectives and is derived from Josephson's "Five Steps to Principled Thinking" (Josephson, 1993, pp. 39-41). The case objectives concentrate on identification of ethical issues and possible solutions based on the facts presented in an individual case. The second group of questions structures analysis of the ethical decision making process using traditional ethical theory and Gortner's identification of five factors which influence Government managers' decision making (Gortner, 1991).

Section C presents the eleven cases, arranged topically into four subject areas: (1) conflict of interest, (2) gratuities, (3) customer "urgent requirements," and (4) business relationships with contractors. Each case includes the case narrative, discussion of the case objectives, and an epilogue which reveals how the ethical situation was actually resolved. Where appropriate, additional questions address issues raised by the epilogue and test conclusions drawn from the case by requiring the reader to consider the case with modified facts.

B. GENERAL TEACHING NOTES

1. Case Objectives

The case objectives consist of four questions which have been condensed from Josephson's "five steps to principled reasoning" (Josephson, 1993,):

1. **Clarify**: Determine precisely what must be decided. Formulate and devise the full range of alternatives.
2. **Evaluate**: If any of the options require the sacrifice of any ethical principle, evaluate the facts and assumptions carefully.
3. **Decide**: After evaluating the information available, make a judgment about what is or is not true, and about what consequences are most likely to occur.
4. **Implement**: Once a decision is made on what to do, develop a plan of how to implement the decision in a way that maximizes the benefits and minimizes the costs and risks.
5. **Monitor and Modify**: An ethical decision maker should monitor the effects of decisions and be prepared and willing to revise a plan, or take a different course of action, based on new information.

The four questions used in the case objectives are:

1. **Identify the ethical issue(s) presented by the case.**
2. **Identify factors which could impact resolution of the ethical issue(s) presented by the case.**
3. **How can the ethical issue(s) of this case be resolved?**
4. **What can be done to forestall such ethical situations?**

The intent of these case objectives is to launch discussion of an individual case. Emphasis should be on identification of the ethical dilemmas presented by the case and possible solutions to the dilemmas.

2. Analysis of the Decision Making Process

Questions focusing on the decision making process expand the discussion of the second case objective listed above. Gortner's five factors and the three theoretical views of ethics - absolutistic, utilitarian, and humanitarian - provide a useful framework for analysis

of the decision making process for resolution of ethical dilemmas. The discussion questions are arranged according to Gortner's five factors: law, organizational dynamics, professional ethics, individual characteristics, and philosophical or cultural values. Although these questions have not been included in Section C, they are meant to be used with each case.

a. *Law*

1. **How does the Federal Acquisition Regulation and the Procurement Integrity Act apply to the ethical dilemma?**
2. **Is the law or regulation an obstacle or an aid toward resolving the ethical issue at hand?**

b. *Organizational Dynamics*

1. **How can the decision maker's position in his or her organization's hierarchy influence his or her perception of the ethical dilemma?**
2. **How might the decision maker's position in the organizational hierarchy affect his or her ability to resolve the ethical dilemma?**
3. **How could the organization's culture, with regards to the stated and practiced ethical values, influence resolution of the ethical dilemma?**
4. **How could the organization's culture, with regards to the kind of interaction and communication among employees and supervisors, affect resolution of the ethical dilemma?**

c. *Professional Ethics*

1. **What business or purchasing ethical principle could be applied to the ethical situation?**

d. *Individual Characteristics*

In brief, Kohlberg defines six moral developmental stages which rank motivation or incentives for doing "good" from immature to most mature:

First Stage: Fear of punishment, or desire for reward.

Second Stage: Self-gratification.

Third Stage:	Group acceptance and approval.
Fourth Stage:	Respect for law and order.
Fifth Stage:	Recognition of higher societal principles.
Sixth Stage:	Acknowledgement and acceptance of universal ethical principles.

1. **How might an individual's moral developmental stage influence how he or she resolves the ethical dilemma?**
2. **If a decision maker tends to favor one of the three basic ethical views - absolutistic, utilitarian, or humanitarian - in what way could his or her ethical approach determine how the ethical dilemma is resolved?**
3. **How might an individual's personal background, such as religious beliefs, education, and job experience, shape his or her perception of the ethical dilemma?**

e. *Philosophical or Cultural Values*

Some of the DOD acquisition system's cultural values may be defined by the recent shift from emphasis on "lowest price" to "best value," a preference for competition, and the desire to protect taxpayer interests.

1. **What else may be considered as a cultural value for the DOD acquisition system?**
2. **How might the acquisition system's cultural values affect resolution of the ethical dilemma?**

C. CASE SCENARIOS

1. Conflict of Interest Cases

Avoidance of conflicts of interest by separating private and public interests represents a core issue addressed by ethics legislation. The reason for avoiding conflicts of interest is to ensure "complete impartiality with preferential treatment for none, except as authorized by statute or regulation." (FAR, Part 3.101-1) All three of the following cases, *Training for Process Facilitators, Any Construction: Only $1995*, and *Computer Services for the Pentagon*, raise the issue of an appearance of preferential treatment,

however, *Any Construction* presents the strongest evidence of actual preferential treatment. *Computer Services for the Pentagon* shows two kinds of preferential treatment, that which is "authorized by statute or regulation" and that which comes out of an official's personal preference for a particular firm. In the case, the reason for the official's preference is not known, but it does foster the appearance of a conflict of interest.

The Procurement Integrity Act speaks to the conduct of Government employees, acting as procurement officials, and contractors during the pre-award phases of a specific procurement. In general, the Act prohibits the transfer or communication of proprietary (from competing contractors) and source selection information between procurement officials and contractors. As defined by the Act, procurement officials includes those Government employees who participate "personally and substantially" in the preparation of a purchase request, the drafting of a specification or statement of work, the preparation of a solicitation for the procurement, selection of sources, and review and approval of the contract award for the procurement (FAR, Part 3.104). This definition is particularly significant for *Any Construction*, because the engineers, as preparers of the purchase requests and specifications for construction jobs, are prohibited from disclosing information to a competing contractor which would "jeopardize the integrity or successful completion of the procurement concerned" (FAR, Part 3.104-4k).

a. ***Case One***

Training for Process Facilitators

Case Narrative

Ms. Lewis, a buyer in a contracting activity, receives a phone call from the owner of a business that provides TQL training. The owner, Mr. Johnson, tells Ms. Lewis that the Naval Base will be sending over a purchase request for is services and he wants to make sure that the purchase request will be processed quickly. The Naval Base has scheduled the training to begin within a few days. As the Naval Base had not yet

submitted its purchase request to the contracting office, Ms. Lewis tells Mr. Johnson that she cannot tell when or to whom a contract will be awarded until she has evaluated the requirement. The next day, Mr. Johnson calls Ms. Lewis and tells her that his friend, Commander Alexander (the Director of Contracting), had already told him that he would probably get the contract, and additionally, he is to receive full payment prior to the beginning of the training. Mr. Johnson is experiencing cash flow problems in his firm, and he is insistent about receiving advance payment.

Ms. Lewis is unaware of any association between Commander Alexander and Mr. Johnson, other than what Mr. Johnson claims is a friendship. However, the contractor does happen to be an acquaintance of Commander Alexander. Additionally, Commander Alexander had commissioned him as a speaker for the Supply Corps Ball two months earlier.

Case Objectives

1. Identify the ethical issue(s) presented by the case.

Ms. Lewis faces the dilemma of deciding whether to inform her boss, Commander Alexander, about Mr. Johnson's insinuations that he has been promised the contract. The potential appearance of a conflict of interest arising from Mr. Johnson's friendship with the Director of Contracting could give the impression that he has special access to contracts for training. Mr. Johnson's references to his friendship with the Director of Contracting reinforces that impression.

2. Identify factors which could impact resolution of the ethical issue(s) presented by the case.

As an aspect of the organization's dynamics, the approachability of Commander Alexander is one factor that will determine how Ms. Lewis decides to resolve the issue. If Commander Alexander encourages frank communication with his employees, Ms. Lewis will find it easier to inform him of Mr. Johnson's remarks. If, however, Ms. Lewis expects him to take offense and interpret her reporting of Mr. Johnson's remarks as an accusation, she will probably decide not to inform him.

Compounding the issue is the fact that the training contract would not be competed. Mr. Johnson would be "sole source." This is due to the amount of time available to find an instructor. The Government acquisition system's cultural preference for competition may compel Ms. Lewis to insist that the Naval Base's training requirement be competed. Regulatory guidelines for advance payments are another factor which will impact resolution of the issue. The Naval Base's training requirements does not meet the conditions for advance payments under the FAR (FAR, Part 32.4).

3. How can the ethical issue(s) of this case be resolved?

Ms. Lewis should inform Commander Alexander of Mr. Johnson's remarks. Once he has been made aware of the situation, the Director of Contracting should recuse himself from any contracting process with Mr. Johnson. Additionally, if the Naval Base can reschedule the training, the contract could be competed.

4. What can be done to forestall such ethical situations?

Open communication in the organization about ethical issues will encourage employees to identify and bring attention to ethical situations as they occur. The Director needs also to stress the importance of perceived unethical actions as well as actual misconduct.

Periodic training on the contract process with potential contractors will reinforce guidelines for contract financing, the appearance of conflict of interest, and proper conduct with customers and Government buyers. Educating customers on the contracting process will help them to understand why the process takes time, and perhaps persuade them to submit their purchase requests in sufficient time to meet their requirements. Earlier identification of the Naval Base's training requirement would have alleviated the sense of urgency that might have led to improper shortcuts to meet the requirement.

Epilogue

When the buyer alerted the Director to Mr. Johnson's assertion that he had been promised the contract and advance payment, the Director recused himself. The Deputy Director was to handle any transactions concerning the purchase request for the training. However, the Naval Base never submitted its purchase request. Instead, the Base hired Mr. Johnson through the Human Resources Office as a temporary employee.

Additional Questions for Discussion

1. **If Mr. Johnson had been awarded the contract and Commander Alexander did not learn about Mr. Johnson's assertions until after the fact, how could he alleviate the appearance of favoritism?**
2. **Suppose Mr. Johnson's assertions were true, and Ms. Lewis had discovered that Commander Alexander did promise Mr. Johnson the contract, how might Ms. Lewis resolve the issue?**
3. **If Mr. Johnson had made the assertions to the customer originating the requirement for the Naval Base, what should the customer have done?**

b. *Case Two*

Any Construction: Only $1995

Case Narrative

A contracting officer notices that several requests for construction jobs from a particular customer each have estimated costs of $1995. The recurring figure of $1995 catches the contracting officer's attention and he researches his records and decides that the frequency of the number $1995 is more than just coincidence. The contract awards for the construction jobs seem to center on the same group of three or four contractors. That the estimates fall just under $2000 also seems particularly significant to the contracting officer. Under provisions of the Davis-Bacon Act, the contracting officer

has to obtain wage rate approval from the Department of Labor (DOL) for construction contracts of $2000 and over. This process of deciding the wage rates and getting approval from DOL usually requires sixty days.

The Government engineers drafting the construction requirements are supposed to develop the cost estimates independently. While the engineers can contact construction firms as part of their market research, their estimates should result from independent analysis, not just replicate construction firms' estimates. Because of the inordinate amount of time that contractors spend with the engineers, the contracting officer suspects that cost estimates for nearly 75% of the small (under $2000) construction jobs have not been developed independently from construction contractors. He routinely calls up the contractor, describes a job, and finds that the contractor's price quotation matches the Government engineers' cost estimate exactly. He doubts that the time-consuming process of obtaining wage rates would sufficiently motivate construction firms to underquote construction jobs. Instead, the contracting officer is concerned that construction jobs, which may have cost $1000, or $1300, for example, are being quoted to the $2000 ceiling.

<u>Case Objectives</u>

1. Identify the ethical issue(s) presented by the case.

The contracting officer suspects that the engineers are deliberately overpricing construction jobs in collusion with contractors. In addition to the inflated cost estimates, the engineers' dealings with the contractors raise questions about their impartiality in drafting the purchase requests and writing the specifications and statements of work for construction jobs. If the contractors are submitting proposals using information obtained from the engineers they can be held liable under the Procurement Integrity Act, as can the engineers. The contracting officer can either ignore the situation or try to correct it.

The reasonableness of the $2000 threshold for DOL wage determination is another issue. As a consequence of the relatively low dollar value for construction jobs,

the threshold provokes customers to "split requirements" in order to shorten the amount of time required to award a construction contract. Breaking this rule, while illegal, may be the ethical action to take.

2. Identify factors which could impact resolution of the ethical issue(s) presented by the case.

Uncertainty about what is actually going on in the engineers' offices could make the contracting officer hesitant to act. The amount of information available, and the kind of rapport between the contracting activity and the customer command, will influence how the issue is resolved. If the contracting officer has a strong affinity with the customer command, he may feel torn between feelings of loyalty and his sense of duty to report the suspected fraud.

How the issue is resolve will also depend on how the customer command views the situation. For example, if as a result of a utilitarian analysis the command decides that the amount of inflated costs represents an insignificant portion of the command's total budget, the command may resist efforts to legally prosecute the engineers. Instead, the command may opt to take less severe disciplinary measures.

3. How can the ethical issue(s) of this case be resolved?

The contracting officer through his supervisor, could alert the customer command of the unusual frequency of the $1995 construction estimates. Another means of obtaining independent estimates would be to have another activity perform the estimates. Since the evidence indicates a strong possibility of fraud, referring the problem to an investigation service would be an appropriate action.

4. What can be done to forestall such ethical situations?

Employees of customer commands, who are directly involved in the drafting of specifications and specifications for purchase requests, need to be included in training on the Procurement Integrity Act. Periodic training, for construction firms, in addition to the mandated Procurement Integrity Act contract clauses, would ensure that the contractors understood the provisions of the Act.

Epilogue

Based on the high number of construction estimates being quoted at $1995, and the constant presence of contractors in the engineers' offices, the contracting officer notified the Defense Investigate Service (DIS).

Additional Questions for Discussion

1. **Should the contracting officer have informed the engineers' command of his suspicions before calling DIS? Why or Why not?**
2. **How would a higher DOL threshold impact the engineers and the contractors in this case? Would it change any of the ethical issues?**

c. *Case Three*

Computer Services for the Pentagon

Case Narrative

A high-level Pentagon official has handpicked an 8(a) (small, disadvantaged business) to provide support for the computers in his organization. Because the contract is less than $3 million, the contracting officer can award to the 8(a) firm without competition. Based on their pre-award survey of the firm, auditors from the Defense Contract Audit Agency (DCAA) assess the firm's accounting system as deficient. They discover many accounting irregularities such as the allocation of church donations and parking tickets to business expenses. The auditors pass on the information to the contracting officer, recommending that the contract not be awarded to the firm. Under normal circumstances, the contracting officer disqualifies companies with such severe accounting problems from contract awards. The contracting officer refuses to sign the computer services contract until the firm fixes its accounting system.

When the Pentagon official learns of the contracting officer's refusal to award the contract, he calls the Director of Contracts and insists that the 8(a) firm be given the contract. The contracting officer is ordered to sign the contract by the following

Tuesday. To mitigate the risk caused by the deficient accounting system, the contracting officer inserts a contract clause requiring that the firm correct the deficiencies and undergo a post-award audit. The firm fails the post-award audit. After a second audit, DCAA provides the firm with additional recommendations on how to improve its accounting system and correct the problems. A year after receiving the contract, the firm finally has an adequate accounting system.

Case Objectives

1. Identify the ethical issue(s) presented by the case.

The primary issue in this case is the Pentagon official's improper use of his authority to interfere in the procurement. Another issue is the favoritism shown to the 8(a) firm, and the possibility of a conflict of interest, due to the Pentagon official's handpicking of the computer services firm.

2. Identify factors which could impact resolution of the ethical issue(s)presented by the case.

A significant factor which will impact any decision regarding the contract award is the Pentagon official's hierarchial position and authority over the contracting activity. Another factor is the firm's status as an 8(a) firm, which allows it to receive the contract without having to compete for it.

3. How can the ethical issue(s) of this case be resolved?

If the contracting activity explains the extent and significance of the firm's problems with its accounting system, the Pentagon official may have to agree to the selection of another 8(a) contractor. Perhaps by gently pointing out the appearance of a conflict of interest, the contracting activity may convince the Pentagon official that awarding to another contractor would be the best course of action.

The organizational dynamics in this case, as defined by the Pentagon's official's power and influence over the contracting activity, limit the contracting officer's ability to oppose the official. For this reason, this issue is probably one that the contracting officer should raise to a higher level.

4. **What can be done to forestall such ethical situations?**

Better communications between the contracting activity and the Pentagon official may have prevented his interference. The provisions of the the Procurement Integrity Act need to be stressed to customers as well as acquisition employees.

<u>Epilogue</u>

The contracting officer was not able to find out why the Pentagon official wanted that particular firm for computer support. As it turns out, the firm performed well, but there were questions about the accuracy and validity of the costs for supplies and services provided at the beginning of the contract due to the inadequacies of the accounting system.

<u>Additional Questions for Discussion</u>

1. **If the computer service firm's past history shows it be an outstanding performer, how might the firm's performance history affect the contracting officer's consideration of its accounting irregularities in his decision on whether to award the contract?**

2. **How would the contracting officer's ability to oppose the Pentagon official's insistence on the particular firm change if he knew there was an actual conflict of interest?**

2. **Gratuity Cases**

The intent of prohibitions in business and Government codes of conduct against acceptance of gratuities is to prevent improper influence on an employee's decisions. As stated in the National Association of Purchasing Management Standards of Purchasing Practice, an individual should avoid accepting money or gifts "which might influence, or appear to influence purchasing decisions (Sherman, 1991, p.365)." In addition to the provisions of the Procurement Integrity Act, which prohibits acceptance of gratuities by

Government employees involved in the awarding of a specific contract, the FAR forbids the acceptance of gratuities from anyone who,

> has interests that may be substantially affected by the performance or nonperformance of the employee's official duties (FAR, Part 3.103).

As with conflict of interest issues, the appearance of being influenced by a gratuity is to be avoided as strenuously as the actual trading of influence for a gift or "other thing of value."

a. ***Case Four***

Courtesy of Rolls Royce

Case Narrative

A Naval officer participates in a program review of a project headed up by Rolls Royce. As a business financial manager, the officer assists the Program Manager in financial planning for the program and formulates and monitors execution of the program's budget. The Naval officer also has prior experience as a contracting officer which makes him sensitive to the issues of contractor gratuities. When the Naval officer arrives in England, the site of Rolls Royce's offices and manufacturing plants for the project, he discovers that the team's lodging is in a hotel run by Rolls Royce. The officer soon realizes that Rolls Royce is paying for nearly every aspect of the hospitality, including lavish meals, and tours of the city. Most of the other team members do not think that there is anything inappropriate about letting Rolls Royce pay for everything. Apparently, the prevailing standards of conduct between suppliers and buyers differ significantly from the standards between U.S. companies and Government buyers. The dilemma arises when other U.S. Government employees accept what the contracting officer feels are inappropriate gratuities.

Case Objectives

1. Identify the ethical issue(s) presented by the case.

The primary issue is the officer's responsibility for preventing the group from accepting what he recognizes as improper gratuities from Rolls Royce. Even if he decides to pay for his own lodging and meals, Rolls Royce's hospitality could taint the overall objectivity of the program review team if the other members continue to accept the gratuities. Another issue is whether the different standards of conduct in a foreign country justify ignoring rules under U.S. standards of conduct which govern relationships between the Government and suppliers.

2. Identify factors which could impact resolution of the ethical issue(s) presented by the case.

The officer's individual characteristics, such as his sense of responsibility to the group as a whole and his level of ethical maturity as defined by Kohlberg , will impact how he resolves the issue. Because other members of the program review team seem unconcerned about the impropriety of accepting Rolls Royce's hospitality, the officer might give in to subtle peer pressure and decide to disregard his own misgivings. "When in Rome, do as the Romans do," could be a rationalization for not questioning the propriety of accepting Rolls Royce's hospitality.

One aspect of the team's organizational dynamics which will be a factor in the officer's decision is the degree of authority the officer has over the other members. If he is senior to most of the other members he could "pull rank" and direct the program review team to refuse the gratuities. If there is no significant difference in rank among the team members, the officer may decide to try and persuade the other members to refuse the gratuities. However, if the officer is the junior member on the team he may be reluctant to actively pursue the issue with the team.

3. How can the ethical issue(s) of this case be resolved?

Speaking with the senior member about his misgivings could clear up questions about what is or is not acceptable for the contracting officer. There is always

the possibility that Government reimbursement for the lodging, meals, and events, funded by Rolls Royce was arranged prior to the trip (this is doubtful, because the officer, acting as the Business Financial Manager, should have known about such arrangements). If the contracting officer still feels uncomfortable, he can politely refuse the "freebies" and pay his own way.

4. What can be done to forestall such ethical situations?

Discussion about how business is conducted in England, or other foreign countries should be held prior to the team travel. Questions about what can or cannot be accepted from contractors should be answered prior to official trips. For this case, protocol for the team's role as guest and Rolls Royce's role as host should have been carefully planned and briefed to everyone involved in the program review.

Epilogue

The Naval officer and one other team member separated themselves from the group and paid for their lodging and meals.

Additional Questions for Discussion

1. **Did the officer's decision to pay for his own way alleviate his ethical responsibility? Why or why not?**
2. **If the other members of the program review team insist on accepting Rolls Royce's gratuities, how far should the business finance manager push the issue?**

b. *Case Five*

Lunch at the Chinese Food Restaurant

Case Narrative

A contracting officer visits a contractor's plant along with two other contract administrators from the Contract Administration Office (CAO). The purpose of the visit is to verify that the contractor had earned the progress payments. Because the trip to the contractor's plant takes three hours each way, the representatives from the CAO

agree to a working lunch with the contractor to save time. The plant representative takes the Government employees to a Chinese Restaurant, which is owned by one of his relatives. At the end of the lunch, the plant representative refuses to allow the Government employees to pay for their lunch. When they ask the price of the meals, the plant representative insists that the meals do not cost anything. Even after the contracting officer explains that they simply cannot accept the gratuity of a free lunch, and that they are obligated to pay the market value of the meal, the plant representative still refuses to accept any money. A bill for the CAO representatives' lunches was never delivered to the table.

Case Objectives

1. Identify the ethical issue(s) presented by the case.

The plant manager's offer of free lunch places the CAO representatives in a difficult position. They have to refuse his offer because acceptance of the lunches would potentially influence their objectivity as they decide the amount of the progress payment. The fact of the offer impairs the business relationship between the CAO and the contractor and could potentially influence future decisions.

2. Identify factors which could impact resolution of the ethical issue(s) presented by the case.

The ethical environment in the CAO would influence how the Government employees react to the plant manager's offer of a free meal. If it is common practice to accept paid lunches from contractors, then the employees will be less likely to refuse the plant manager's offer.

3. How can the ethical issue(s) of this case be resolved?

Since the ethical issue does not arise until after the meal, the CAO representatives are not able to refuse the lunches. The CAO employees should determine the cost of the meals and leave that amount at the restaurant.

Discussion of the plant manager's offer should take place between the CAO and the contractor. Although the plant manager may have been well-intentioned, the necessity of protecting the Government's impartiality needs to be understood by both parties.

4. What can be done to forestall such ethical situations?

Periodic training for the contractor will reinforce guidelines for ethical conduct. Additionally, consistent practice of ethical conduct by the CAO representatives will demonstrate the CAO's commitment to its ethical principles.

Epilogue

The CAO representatives called the waitress over to the table and asked her to witness their placing of cash on the table. They each paid about ten dollars.

c. *Case Six*

Missile Memorabilia

Case Narrative

A newly assigned Administrative Contracting Officer (ACO), is invited to take a tour of a contractor's plant to help him become familiar with a particular missile program. At the end of the day-long tour, the contractor's program manager ushers the ACO into a small store at the plant site. The store stocks primarily memorabilia items such as ballcaps, pens, jackets, and t-shirts, all emblazoned with the company emblem and slogans about the prowess of the missile. As the program manager walks through the store, he pulls items down from the shelves, and hands them to the ACO. By the time the two leave the store, the ACO has his arms full. The combined value of the merchandise totals about $40.

Case Objectives

1. Identify the ethical issue(s) presented by the case.

Because the contracting officer will be directly involved in the administration of contracts performed by the missile contractor, acceptance of the items may weaken his objectivity.

2. Identify factors which could impact resolution of the ethical issue(s)presented by the case.

The factors present in this case are essentially the same as those in the *Lunch at the Chinese Restaurant* case. His decision on whether to accept the memorabilia from the missile plant representative will depend on his knowledge of what is considered ethical for Government contracting officers, and on his willingness to conform with the ethical standards. Additionally, the contracting officer's inexperience will impact his ability to resolve the situation. A more experienced contracting officer would probably not have accepted the gifts.

3. How can the ethical issue(s) of this case be resolved?

Refusal of the memorabilia represents the best course of action. Although the items themselves have nominal value (the total cost of all the items is $40), the contracting officer should not accept them because he will be administering the contract. His duties as contract administrator will require him to monitor and evaluate the contractor's performance.

4. What can be done to forestall such ethical situations?

The contracting activity needs to ensure that new contracting officers know and understand the ethical standards of conduct for Government employees and acquisition employees, in particular. Contractors also need periodic training on the ethical standards of conduct.

Epilogue

When the contracting officer returned to his office, his supervisor instructed him to return the items.

3. Customer "Urgent Requirement" Cases

Issues presented in the "urgent requirement cases" center on the acquisition employee's interaction with a customer. On the one hand, the acquisition employee is obligated to obey the "rules" given in the Federal Acquisition Regulation (FAR). However, in order to meet a customer's urgent requirement, the acquisition employee may have to work outside of the "rules." Dilemmas arise when the customer's definition of "urgent" differs from the acquisition employee's.

In *Carpool Fair*, the customer's urgency results from a need to meet a deadline imposed by another Governmental agency. The urgency in *Communication Devices* is more pressing because the customer's need for the communications devices was unanticipated. Furthermore, delays in processing the request for devices will have more dire consequences than the *Carpool Fair* customer's failure to meet a deadline. Despite the much greater degree of urgency, the contracting officer in *Communication Devices* is just as concerned (if not more so) in following the regulatory guidelines as is the contracting officer in *Carpool Fair.*

a. *Case Seven*

Carpool Fair

Case Narrative

To meet the requirements of the local Air Quality Agency, the Commanding Officer of a Naval Base decides to hold a fair to promote carpooling. The Carpool Fair represents one of ten options of which eight have to be completed to meet local Air Quality Agency requirements. Getting a high percentage of base employees to attend the fair is a primary concern so that the fair can count toward the Air Quality Management requirements. To prevent excessive scrutiny of the Naval Base's environmental practices, the Commanding Officer wants to remain in good standing with the local Air Quality Agency.

The Security Department has responsibility for organizing the fair and ensuring that as many people as possible attend. With that goal in mind, the Security Department drafts the purchase request for promotional items with carpooling slogans, such as balloons, pens, and coolers. Included in the purchase request are clock radios, and cassette players for door prizes. Additionally, the purchase request names a specific vendor for supply of the items.

Having just received a Procurement Management Review (PMR) warning about promotional items, the contracting officer worries about the legality of using appropriated funds to buy promotional items. In discussions with the Security Department officer, the contracting officer learns the Air Quality Management Agency has designated a specific vendor as the source of supply for carpool fairs.

Case Objectives

1. Identify the ethical issue(s) presented by the case.

The primary issue of this case is whether the Naval Base's requirement to comply with the Air Quality Agency's requirements outweighs the requirement to follow legal guidelines for use of appropriated funds. Designation by the agency of a particular vendor raises the secondary issue of whether the vendor is receiving improper preferential treatment.

2. Identify factors which could impact resolution of the ethical issue(s)presented by the case.

The immediacy of the deadline for the carpool fair makes the requirement for the promotional items "urgent." The ranking of the comparative importance of compliance with the Air Quality Agency versus compliance with the regulations governing appropriated funds will determine how the issue is resolved. An utilitarian analysis would probably hold the benefit of compliance with the Air Quality Agency as having a greater value (cleaner air for the local residents) than compliance with the regulations, the benefit of which would be $500 "saved" for taxpayers. A humanitarian view might judge compliance with the agency as more important since cleaner air represents a greater good

than the $500. If the decision maker took an absolutistic approach, he would focus on the "rules" for use of appropriate funds.

Another factor which would influence a decision is the political aspect of the Commanding Officer's desire to keep the Naval Base on the "good side" of the Air Quality Agency. If the agency perceives the Naval Base as reluctant to comply with its directives, it could conceivably limit the Commanding Officer's discretion in his governing of the Naval Base.

The PMR has made the issue of the legality of funding the door prizes a prominent issue for the contracting officer. Additionally, legality of the use of designated vendor will also determine how the issue is resolved. It is possible that the vendor is working under a contract with the Air Quality Agency, or has been given statutory authority to provide supplies to all Governmental agencies sponsoring carpool fairs. If not, then the contracting officer may decide to use another contractor.

3. How can the ethical issue(s) of this case be resolved?

Rescheduling of the fair would allow time to research the legality of using the designated vendor and other alternatives for obtaining the door prizes. An extension of the deadline to meet Air Quality compliance could allow for performance of another of the options. If an extension will not be granted, or if none of the other options can be performed, perhaps the door prizes could be obtained by other means such as from the Morale, Welfare, and Recreation (MWR) office or from private donations.

4. What can be done to forestall such ethical situations?

Earlier identification of a requirement, especially for a known deadline, would allow time to research issues such as the legality of the designated vendor and the funding source for the requirement. The Security Department should have planned the fair earlier, and involved the contracting office in the planning. Educating the customer on the legal use of appropriated and non-appropriated funds should alert the customer to carefully screen its requirements.

Epilogue

Because the contract was only for $500, and the items were needed immediately, the contracting officer approved the contract.

Additional Questions for Discussion

1. **What ethical principles are represented by the contracting officer's decision?**
2. **If the PMR had not addressed the use of appropriated funds, how would the contracting officer have viewed the issue?**

b. ***Case Eight***

Communication Devices

Case Synopsis

A new contracting officer, with less than six months of experience, receives an urgent requirement for communication devices needed by a combat unit deployed overseas. Only one contractor can meet the specifications and supply the communication devices. Realizing that the Government cannot obtain the communication devices from any other supplier, the contractor pads his price considerably. The contractor's proposal includes what the contracting officer thinks is an exorbitant amount of profit. He consults with several of his more experienced colleagues in the contracting office and they confirm that the profit does represent an "outrageous" amount of profit.

The contractor refuses to provide cost or pricing data in support of its proposal. In addition, the contractor objects to several clauses required by the Federal Acquisition Regulation (FAR), including the mandatory audit clause which grants the Government the right to "examine and audit - books, records, documents, . . . and accounting procedures . . . (FAR para. 52.215-2)," to evaluate a contractor's costs.

During the contracting officer's preparation of the contract for award, a senior representative of the customer - an Army Colonel - calls daily, demanding that the contracting officer make the award immediately. Because the communication devices are

needed in support of an "unexpected" operation overseas, the Director of Contracting dismisses the contracting officer's concerns about the contractor's price and insists that the contracting officer sign the contract immediately. Long after the contract award, the contracting officer's misgivings about the fairness and reasonableness of the contractor's price still cause him to question the rightness of the decision.

Case Objectives

1. Identify the ethical issue(s) presented by the case.

Two significant issues emerge from this case. The first is the contractor's "price gouging" to take advantage of a crisis situation. The second issue centers on the balance between the contracting officer's responsibility to determine that a price is "fair and reasonable" and the urgent need for the communication devices .

2. Identify factors which could impact resolution of the ethical issue(s) presented by the case.

The urgency of need for the communication devices, which have to be sent overseas immediately, represents the most significant factor. Aggravating the situation is the supplier's status as a sole source, which has motivated the contractor to raise the price for the communication devices.

Another factor is the contracting officer's concern about the contractor's price which seems to override his sense of the customer's urgency, despite the pressure from a senior official from outside of the command.

3. How can the ethical issue(s) of this case be resolved?

There is not any alternative for purchasing the communication devices. The requirement will not change, nor will another source of supply appear in time to support the customer.

4. What can be done to forestall such ethical situations?

More personal involvement by the Director of Contracting would have mitigated the contracting officer's concerns about the contractor's price. Additionally, since this was probably not the first time, or the last time, a contractor took advantage

(rightly or wrongly) of a crisis situation, discussions of such scenarios would have better prepared the new contracting officer.

Epilogue

As a result of the hostile negotiations and what the contracting officer perceives was a lack of command support, the contracting officer still feels uneasy about the situation and avoids the contractor.

Additional Questions for Discussion

1. **Assuming that the customer has agreed to pay the inflated price for the communication devices, should the contracting officer have considered the customer's willingness to pay in his decision of whether to award the contract? Why or why not?**
2. **What ethical view is revealed by the contracting officer's focus on the contractor's statutory responsibilities rather than on the customer's dire need for the communication devices?**
3. **What can be done to alleviate the contracting officer's continuing distress over the contract award?**

4. **Business Relationships with Contractors Cases**

As a customer, the Government's policy objectives makes its role as a buyer one that goes beyond that of just obtaining goods and services (Sherman, 1991). Policy objectives, often dominate the procurement process and can be "conflicting and peripheral to the acquisition of services or material (Sherman, 1991, p.38)."

Slashed Prices! Going out of Business is actually a verbatim monologue from a contracting professional who has been in the business of Government acquisition for over fifteen years. His remarks provide a personal perspective that would be lost in a third-person narrative format. The narrator describes the Government acquisition system habit of renegotiating lower prices for contract options as having potentially fatal long-term consequences for the Defense industry and taxpayers.

Progress Payments describes two incidents where a contracting officer's decision to approve or disapprove a company's progress payment affected its ability to survive. *Gentlemen's Agreement* recounts an unofficial business understanding between the Government and two contractors which is later rejected by one of the contractors.

a. *Case Nine*

Slashed Prices! Going out of Business

Case Narrative

One situation observed by a contracting officer as raising ethical issues is the habit of renegotiating prices for contract options : "You enter into a contract with a contractor and you negotiate a contract with option years, and agree to terms and pricing for option years; you're going to purchase a minimum quantity now, and you have the right to exercise that option next fiscal year. You don't have to do that, but everything is in place for you to do that. So, a lot of times ... we come up to the option year point and we say, 'We're not going to exercise the option unless you lower the price.' Now we've done this to contractors, and a they'll lower their price if they realize it's a competitive situation. Or, 'We're going to take our business someplace else.' Now, what have we done by that? When we've set up the contract and negotiate the base plus the option years, we've put in a great deal of effort into structuring the thing, where we've said this is the right price for the system we're buying, and the contractor has put in lot... When they've established that price and those option years' prices, they're thinking about their facilities investments, they're thinking about labor pool. They know they don't have a guarantee they're going to get those options exercised, but they have to make some economic decisions and some long term views of things. Now we come along and say, 'That price isn't low enough for us.' There's nothing illegal about what we're doing, but is that unethical? Is that really an ethical way to do business? Are we just fueling the fires of this adversarial relationship with the contractor? I want to do the best for the taxpayer and get them the best price. But in the end game, when there's nobody around to buy

anything from anymore, have I done anything ultimately to help the defense of the country or help serve the interest of the taxpayer? The immediate requirement may be to get the lowest price I possibly can. The long term may be by doing this kind of stuff, what am I doing to companies out there that are playing in the Defense game and trying to make a decision about whether to go in or go out, 'Should I, [the contractor], be here?' Should I, [the Government], invest all this time and effort in energy to negotiate a base plus option when they [Defense contractors] are looking at some sort of long term commitment multi-year contract? It's not easy to do that; we don't have that kind of budgetary commitment. The best thing to hope for is a base plus option years, - and then we say we're not going to exercise that option."

<u>**Case Objectives**</u>

1. Identify the ethical issue(s) presented by the case.

The implied question posed by the narrator is, "How should the need to protect taxpayer interest by obtaining the best price possible, be balanced against the need to protect the Defense industry from obliteration?" Ostensibly the demands for lower prices are made to protect taxpayer's interests. However, the demands drive contractors out of the Defense business and the taxpayer is left with some Defense industries with no one to provide the goods, and other Defense industries with reduced competition and a likelihood of increased future prices due to the reduced competition.

2. Identify factors which could impact resolution of the ethical issue(s)presented by the case.

Options for contracts are not guaranteed to the contractor who wins the initial contract award. However, when making a proposal for the contract, a contractor takes those option years into consideration. Investments are made for facilities, labor, and equipment with the expectation that they will be offset by the business available in the contract and its options. When a contracting officer demands a lower price, the contractor's economic decisions are nullified

3. How can the ethical issue(s) of this case be resolved?

The narrator suggests that use of multi-year contracts which provide long term commitment for the contractor would encourage contractors to stay in the Defense industry. Current legislation is moving emphasis away from price and toward past performance as a determining factor for source selection for contracts.

4. What can be done to forestall such ethical situations?

The recognition of this macro-level ethical dilemma reflects the narrator's broad perspective of the acquisition system. A broader view by members of the acquisition workforce of the consequences of undue price slashing may prevent the tendency of "bringing the contractor to his knees." Additionally, taxpayer interests have to be defined beyond just "getting the lowest price possible."

Equally important in defining the rightness of business decisions is addressing the Government's social responsibility to the Defense Industry which employs a large portion of the nation's workforce. The Department of Defense generates the most contract actions for the Federal Government which is "the nation's largest single buyer of commercial and modified commercial products (Sherman, 1991, p.36)."

b. *Case Ten*

Progress Payments

Case Narrative

As an interpreter of cost and pricing policy, the Defense Contract Audit Agency (DCAA) reviews contractors' accounting systems and records. Although the role of the DCAA is that of advisor, it's recommendations can hold significant weight in a contracting officer's decision.

Computer Company. Based on an adverse DCAA report, an Administration Contracting Officer (ACO) denies a computer company's progress payment request for $250 thousand. The company's president calls the ACO, asking him to reconsider the payment request. If the company does not receive the progress payment,

it will not be able to make the next payroll. The ACO refuses to approve the progress payment until the problems identified in the DCAA report have been corrected.

The problems require primarily administrative corrections to the payment request paperwork rather instead of major changes to the contractor's accounting system as the ACO had assumed, based on DCAA's recommendation. Once the company resubmits their progress payment request, the ACO expedites the payment.

Trainer Manufacturer. An SDB (Small, Disadvantaged Business) firm that makes trainers for the Navy, receives an adverse evaluation from DCAA, which finds that the firm lacks supporting information for some of the expenses it is claiming on the progress payment request. The ACO knows the company "is living by a string," and decides to approve the payment for $50 thousand despite the DCAA's recommendation. Six months later, the firm files bankruptcy. The ACO had hoped that if he "could get them past the rough spots they might hang on, get the contract underway, and get the contract done."

Case Objectives

1. Identify the ethical issue(s) presented by the case.

The issue presented in this case is the ACO's weighing of the regulatory guidelines for progress payments with his humanitarian perspective in making business decisions.

2. Identify factors which could impact resolution of the ethical issue(s)presented by the case.

A major factor which could influence how the contracting officer makes his decisions on progress payments centers on how he regards the DCAA. If he views that agency as having the ultimate authority in deciding whether a progress payment request is valid, he will be more apt to base his decisions solely on DCAA's recommendations. If however, he views the agency's role as more advisory he will make his decisions based on other factors.

The ACO's personal ethical values will also determine how he decides which progress payment requests to approve. If he values humanitarian considerations over legal requirements he will be more likely to risk erring on the side of the contractor.

3. How can the ethical issue(s) of this case be resolved?

There is no one solution to the dilemmas presented in this case. Some decisions will require "guesses" about whether a particular progress payment is valid. However, by looking at all available information, in addition to recommendations by DCAA, a contracting officer will be able to make good decisions.

4. What can be done to forestall such ethical situations?

The issue presented in this case is not a preventable "problem." Rather, it calls attention to questions that arise in the normal conduct of business by acquisition employees.

Epilogue

The computer company corrected the discrepancies described in the DCAA report and suffered only a short term inconvenience. In the second case, the trainer manufacturer went bankrupt six months after receiving the payment for $50 thousand.

c. *Case Eleven*

Gentlemen's Agreement

Case Narrative

A contracting activity conducted a competition for a major system between two Companies, A and B. Company B won the contract which included three option years. The three parties in the competition - the Government contracting office, Company A, and Company B- all understood the competition to be an "all or nothing competition," with the winner providing all of the requirements identified in the Request for Proposal (RFP). The Justification and Approval for "other than full and open competition" stated an expectation that in the future, the system would be supported by a sole source supplier, presumably the winner of the contract. However, the contracting activity did not

guarantee in writing that whichever company won the contract would be the sole source supplier for the major system.

During the competition, each of the companies indicated that if it lost the competition, it would "be out of it completely," or, in other words, not pursue business for the major system. After the initial contract award to Company B, it expected that it would receive the contracts for the option years, because it would be the sole source supplier. Sometime after the initial contract award for the major system, Company A was acquired by another Defense Contractor, Company C.

The first option has come up, and the contracting activity wants to award it to Company B as the sole source contractor. However, Company C has protested, contending that it has the capability to perform the contract, due to their in-house expertise provided by the former Company A. Company B insists that they have been promised sole source status. Company B has made significant capital investments in anticipation of performing the entire contract, including the three option years.

The contracting officer believes that the contract award for the first option year rightly belongs to Company B, based on the "gentlemen's agreement" made earlier between the Government and the original participants in the initial competition. However, the provisions of the Competition In Contracting Act (CICA), mandate "full and open competition," and Company C does have capability for fulfilling requirements under the contract.

Case Objectives

1. Identify the ethical issue(s) presented by the case.

The primary issue is the value of the promise made to the incumbent contractor balanced against the necessity to promote competition in the marketplace. The "gentlemen's agreement" was illegal from its inception because it violates antitrust laws which attempt to ensure that markets operate competitively (FAR, Part 3.303). Specific practices considered to be anticompetitive include "collusive bidding, follow-the-leader

pricing, rotated low bids, collusive price estimating systems, and sharing of the business (FAR, Part 3.301)." In this case, the "gentlemen's agreement" represents an example of a "sharing of the business." However, the ethical dilemma is heightened because a "gentlemen's agreement" was part of the negotiations and Company B has made significant capital investment decisions based on "the understanding." To totally negate the terms of the agreement will likely have significant negative impact on Company B.

2. Identify factors which could impact resolution of the ethical issue(s) presented by the case.

How Company C views its obligation to recognize the "gentlemen's agreement" entered into by its division, the former Company A, will be a significant factor in the resolution of the ethical issue. Despite the illegality, the ethical responsibility to honor a promise would have been more straightforward, if Company A had remained a separate entity. Whether that responsibility extends to Company C, as the owner of Company A, is less clear since Company C was not a party to the original agreement. Lack of written documentation supporting the "understanding" between the participants in the original contract competition as well as the illegality of the "understanding" would strengthen Company C's case to protest the sole source award of the contract option.

Other factors which will affect resolution of the issue is the acquisition system's preference for competition, and the decreasing Defense budget which limits the amount of contract awards, and makes each contract opportunity more significant to Defense contractors.

3. How can the ethical issue(s) of this case be resolved?

One means of resolving the issue in this case would have been to convince the protesting contractor, Company C, that it was ethically, although not legally, bound by the "gentlemen's agreement" of the original contract competition. Another resolution would have been an offer of future business for the protesting company. However, since future business cannot be predicted or legally guaranteed, this second option is not realistic. Having the case decided in the courts is probably the only course of action.

4. How could the problem have been prevented?

Presumably, the agreement was made out of a desire to reap the benefits of a long-term commitment with the manufacturer of the major system. This could have been legally accomplished through a multi-year contract instead of a contract with multiple options.

Epilogue

This case is currently being decided in the courts. It is expected that the protesting contractor will win, because it does have the capability to perform the contract options.

D. SUMMARY

This chapter has presented eleven case scenarios with discussion questions for use in ethical training for acquisition employees. This chapter combined with Chapter II, Background, and Chapter III, Literature Review, forms an ethical training module. Chapter VII presents conclusions and recommendations drawn from the research and analysis of the collected narratives as discussed in Chapter V, Data Presentation and Analysis.

VII. CONCLUSIONS AND RECOMMENDATIONS

A. GENERAL

The objectives of this research were, to identify common ethical dilemmas confronted by DOD acquisition employees and, to discover how DOD acquisition employees resolved the ethical dilemmas. Data were used to construct case scenarios with teaching notes and discussion questions. A review of the literature revealed potential sources of ethical dilemmas and the factors which form the basis for decisions made to resolve the dilemmas. The collection of narratives from interviews with DOD acquisition employees identified some actual sources of dilemmas and the influences on how those dilemmas may be resolved. Based on the analysis of the narratives, as presented in Chapter V, Data Presentation and Analysis, the following conclusions and recommendations are drawn in response to the research questions posed in Chapter I, Introduction.

B. RESEARCH QUESTIONS

1. Primary

What are common ethical dilemmas faced by DOD acquisition employees and how might these ethical dilemmas be resolved?

The respondents in this study tended to define ethical dilemmas as those situations where they faced a challenge to mandates set forth by the Federal Acquisition Regulation (FAR) and the Procurement Integrity Act. They viewed such dilemmas as compliance versus noncompliance with the FAR or PIA. Organizational dynamics in terms of a decision maker's position in the organizational hierarchy affected how the decision maker defined an ethical dilemma. In general, those at the top of the hierarchy focused on policy issues while those at the lower levels discussed ethical dilemmas in terms of specific provisions of the FAR or the PIA. In addition, organizational dynamics can contribute to ethical dilemmas where a senior person is making a request that the acquisition employee

feels may violate explicit guidance or <u>implied</u> procedures. Individual characteristics such as personal perception of "fairness" represented another factor that determined how a decision maker defined an ethical dilemma.

Ethical dilemmas described in the narratives collected in this study are not necessarily those that can be prevented or avoided. Rather, the ethical dilemmas result from conflicts of values which are inherent in the DOD acquisition system. These conflicts stem not only from the acquisition system's role as liaison between customer and supplier, but also from policy objectives that can override goals of efficiency. Examples of these conflicts include, (1) the necessity of minimizing costs to taxpayers versus the necessity of maintaining a viable Defense industry for future procurement requirements, (2) cost minimization against the customer's need for high quality services and materials, (3) the providing of opportunities and the development of capabilities in small, minority-owned businesses versus fair market competition, and (4) the customer's perception of urgency versus the contracting officer's perception.

a. Ethical dilemmas with Customers

Customers versus Federal Acquisition Regulation (FAR)

In the sample of narratives collected in this study, most of the ethical dilemmas faced by DOD acquisition employees came out of their role as a liaison between their customers and contractors. A majority of the dilemmas emerged from conflicts between how customers wanted their purchase requests processed and what the FAR permits a contracting officer to do. The prevailing concern of customers was the amount of time the acquisition system took to meet regulatory requirements for synopsis and advertisement of solicitations in the Commerce Business Daily (CBD) and the mandated period for receipt of offers and proposals. The dilemma in such situations resulted from a contracting officer's discretion in determining whether a customer's purchase request warranted expedited processing as an "urgent" requirement. While most decisions were made in accordance with the FAR, how an individual resolved such issues depended on

the amount of time available to make a decision, the urgency of the customer's requirement and the individual's own ethical evaluation, the amount of authority and influence a customer had over the contracting office, and the dollar value of the contract.

Improper Influence of Contractors Over Customers

Another common dilemma faced by DOD acquisition employees with their customers resulted from improper influence of contractors over customers. Specifically, as described by the respondents, improper influence would take the form of a contractor's providing information for a purchase request that would define a requirement in a way that it could only be met by that same contractor. Another example of improper influence given in a narrative described a situation where contractors provided cost estimates to engineers who were supposed to develop the cost estimates independently. When a contracting officer observed questionable interaction between a customer and a contractor, he or she could either ignore the interaction and the coinciding appearance of a conflict of interest or attempt to remedy the situation. In the examples collected in this study, the contracting officers intervened and tried to mitigate the contractor's influence.

b. Ethical Dilemmas with Contractors

Dilemmas with contractors came out of conflicts with values embodied in the implicit Government code of ethics. The first value, which holds public trust to be of primary importance, governs an acquisition employee's role as protector of taxpayer's interests. The second and third values, separation of private and public interests, and the avoidance of even the appearance of wrongdoing govern an acquisition employee's personal interaction with contractors.

Conflict of Interest

Interviewees described dilemmas with conflicts of interest that surfaced not as a result of actual conflicts where, for example, a contracting officer owned stock in a particular contractor's firm. Instead, dilemmas resulted from the potential appearance of a conflict of interest; for example, one dilemma concerned long standing friendships with

retired military colleagues who currently work with Defense contractors. To prevent routine contacts with their friends from being interpreted as overly familiar business relationships with contractors, respondents would consult with legal counselors before meeting with any members of private industry.

Gratuities

Gratuities represented a major concern for respondents of this study. The respondents understood the general prohibition against the acceptance of gratuities. Although the values of separation of public and private interests, and the need to avoid even the appearance of wrongdoing, were not explicitly stated by interviewees as reasons for not accepting gratuities, the values were indirectly referred to by interviewees. However, there was confusion about what the laws and regulations did allow acquisition employees to accept. Dilemmas arose when gratuities were viewed as a normal business practice for commercial companies and a contracting officer felt that acceptance of a gratuity would not cause a loss of his or her objectivity. In general, the respondents of this study felt that rejection of the gratuities was the best course of action.

Fair Business Practices versus Taxpayers' Interest

The acquisition employees interviewed in this study confronted ethical dilemmas when the desire to conduct business fairly with contractors conflicted with their role as protector of taxpayers' interests. One example of such a conflict emerged from pricing issues where the protection of taxpayer interest was interpreted to mean obtaining the lowest price possible for a contract while the consequence of providing the lowest price for a contractor was eventual bankruptcy. Decisions on whether to approve progress payments to contractors represented another dilemma resulting from a conflict between protection of taxpayers' interests and the desire to foster a fair business relationship. For progress payments, taxpayer interests were defined by DCAA

recommendations. In an example presented in a narrative, the contracting officer strived to balance DCAA's recommendations with a contractor's need for a stable cash flow based on his own assessment of the contractor's ability to ultimately perform a contract.

2. Subsidiary

a. What are some of the decision making processes used by acquisition employees to resolve ethical dilemmas?

Many of the dilemmas described in the narratives collected in this study occurred in situations where time constraints prevented in-depth analysis of the problem and identification of alternative solutions. However, even when an acquisition employee had time to ponder an ethical dilemma, seldom would he or she resolve the dilemma through an utilitarian weighing of options. Decision making by the respondents of this study tended take a formalistic approach. They defined their dilemmas in terms of the rules given by the FAR or the Procurement Integrity Act (PIA). Using Gortner's classification of five influences - (1) the law and implementing rules and regulations, (2) organizational dynamics, (3) individual characteristics, (4) professions and their codes of ethics, and, (5) philosophical or cultural values (Gortner, 1991) - the data collected in this study show the law as overwhelmingly the single most important influence on acquisition employees' decision making process.

However, when there was a gray area in the rules or when there are seemingly legitimate competing interests, an individual's personal code of ethics or their professional code of ethics came more into play. At that point there is more evidence away from formalist ethics and toward utilitarian or humanitarian based ethical determinations.

b. What can be learned from literature on managerial ethics that can provide both theoretical understanding and actual recommendations for managing ethical dilemmas in the DOD acquisition process?

Coates' Definition of Codes of Ethics and Codes of Conduct

Coates' distinction between codes of ethics and codes of conduct allows one to separate the reason for ethical behavior (codes of ethics) from directives for the

practice of ethical behavior (codes of conduct). This separation permits decision makers to analyze ethical dilemmas in terms of ethical values and not just in terms of rules, particularly for situations not covered by the rules. For DOD acquisition employees, identification of the implied Government Code of ethics - (1) the necessity of gaining and keeping public trust, (2) separation of private and public interests, and (3) the importance of avoiding even the appearance of wrongdoing- would give meaning beyond being just lists of "thou shall nots" to codes of conduct, as embodied by the FAR and the PIA.

Gortner's Study of Federal Public Managers

In his study, Gortner identified five influences on ethical decision making. As listed above, and discussed in Chapter V, Data Presentation and Analysis, the five influences provide a useful framework for understanding ethical decision making by acquisition employees.

Models for Decision Making

The literature also provides numerous models for ethical decision making which can be used to facilitate decision making. As a representative model, the Josephson Institute's "five steps to principled reasoning" (Josephson, 1993) offers a methodical approach for resolving ethical dilemmas:

1. **Clarify**: Determine precisely what must be decided. Formulate and devise the full range of alternatives.

2. **Evaluate**: If any of the options require the sacrifice of any ethical principle, evaluate the facts and assumptions carefully.

3. **Decide**: After evaluating the information available, make a judgment about what is or not true, and about what consequences are most likely to occur.

4. **Implement**: Once a decision is made on what to do, develop a plan of how to implement the decision in a way that maximizes the benefits and minimizes the costs and risks.

5. **Monitor and Modify**: An ethical decision maker should monitor the effects of decisions and be prepared and willing to revise a plan, or take a different course of action, based on new information.

c. What enhancements to existing ethical training frameworks can be recommended based on both literature and specific ethical dilemmas identified in this research?

The value of ethics training is evidenced by the many dilemmas where formalist or rule-based guidance were not the only factors influencing acquisition professionals' decisions. By openly addressing competing interests, alternative ethical determinations and methods for examing ethical dilemmas in contracting, the influence of codes of ethics can be better understood.

The use of actual case studies in ethical training will link codes of ethics to codes of conduct and identify issues that need to be emphasized. Collection of similar case studies should be an ongoing activity to ensure that the issues being discussed are current and relevant to the acquisition workplace. Additionally, the discovery of new issues through the case studies could identify changes that need to be made to acquisition regulations.

The data collected in this study show that a primary source of ethical dilemmas for interviewees came out of their interaction with customers. Current ethical training focuses on the buyer and seller roles between the acquisition system and contractors. Ethical training needs also to address the relationship between acquisition employees and customers, criteria for value determination of customer requirements, and competing interests between the public's fiscal interests and the need to provide adequate services and products to the customer. Furthermore, customers and contractors should be included as recipients of acquisition ethical training. To that end, contracting activities should communicate regularly with their customers and contractors on acquisition ethical issues and regulations governing the Government acquisition system. This would help to

address dilemmas which arise from customers' and contractors' misunderstandings about what can or cannot be done when processing contracts through the Government acquisition system.

d. What is the perceived adequacy of the Joint Ethics Regulation (JER) as a guideline for resolution of ethical dilemmas faced by DOD acquisition employees?

The respondents in this study viewed the JER as an adequate reference for codes of conduct. However, the interviewees' reliance on legal counselors for resolution of ethical dilemmas suggests that the JER is not used as a practical guidebook that is regularly referenced.

C. RECOMMENDATIONS FOR FURTHER RESEARCH

1. Ethical Case Study of a Major System Acquisition

Select a single major system acquisition case and analyze the decision making process at critical points in its acquisition process. Using Gortner's five influences, examine the factors impacting decisions.

2. Examination of Contractor Ethical Decision Making

Select a single Government acquisition case and analyze the contractor's ethical decision making at critical points in the acquisition process.

3. Code of Ethics for the Government Acquisition Workforce

Identify ethical values pertinent to acquisition employees and compile them in a code of ethics which can be referenced by Government Acquisition employees.

4. Acquisition Ethical Guidelines for Customers and Contractors

Develop a training plan which can be used to educate customers and contractors on acquisition ethical issues.

5. Identification of Potential Competing Interests

Conduct research to specifically outline competing interests where dilemmas are most likely to arise because the decision either falls outside the regulatory guidelines or where there are conflicting expectations.

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